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THE SEVERAL TRYALS OF EDWARD *Earl of* Warwick *and* Holland, AND Charles Lord Mohun,

BEFORE THE

Houſe of PEERS in Parliament,

Upon the 28th and 29th Days of *March*, 1699.

For the Murder of Mr. *Richard Coote*;

The Right Honourable *John* Lord *Sommers* Baron of *Eveſham*, Lord High Chancellor of *ENGLAND*, being LORD HIGH STEWARD upon that Occaſion.

Publiſh'd by Command of the Houſe of PEERS.

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THE TRYAL OF EDWARD Earl of Warwick and Holland.

Die Martis 28 Martii, 1699.

ABout Eleven of the Clock the Lords came from their own House into the Court Erected in *Westminster-Hall*, for the Tryals of *Edward* Earl of *Warwick* and *Holland*, and *Charles* Lord *Mohun*, in the Manner following.

The Lord High Steward's Gentlemen Attendants, two and two.

The Clerks of the House of Lords, with the Two Clerks of the Crown in the Courts of *Chancery* and *Kings-Bench*.

The Masters in Chancery, two and two.

Then the Judges.

The Peers Eldest Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeoman Usher of the House.

Then the Peers, two and two, beginning with the youngest Barons.

Then Four Serjeants at Arms, with their Maces.

Then one of the Heralds, attending in the Room of *Garter*, who by reason of his Infirmity could not be present.

And the Gentleman Usher of the Black Rod, carrying the White Staff before the Lord High Steward.

Then the Lord Chancellor, Lord High Steward of *England*, alone.

When the Lords were seated on their proper Benches, and the Lord High Steward upon the Wooll-pack.

The Two Clerks of the Crown in the Courts of *Chancery* and *Kings-Bench*, standing before the Clerks Table with their Faces towards the State.

The Clerk of the Crown in *Chancery* having His Majesty's Commission to the Lord High Steward in his Hands, made three Reverences towards the Lord High Steward, and the Clerk of the Crown in *Chancery* on his Knees presented

the Commiſſion to the Lord High Steward, who delivered it to the Clerk of the Crown in the *Kings-Bench*, (then likewiſe Kneeling before his Grace) in order to be Opened and Read, and then the Two Clerks of the Crown making three Reverences, went down to the Table; and the Clerk of the Crown in the Court of *Kings-Bench* Commanded the Serjeant at Arms to make Proclamation of Silence, which he did in this manner.

Serjeant at Arms. O Yes, O Yes, O Yes, My Lord High Steward his Grace does ſtraitly Charge and Command all manner of Perſons here preſent, to keep Silence, and hear the King's Majeſty's Commiſſion to His Grace my Lord High Steward of *England* directed, openly Read upon pain of Impriſonment.

Then the Lord High Steward ſtood up, and ſpoke to the Peers.

Lord High Steward. Your Lordſhips will be pleaſed to Stand up, and be Uncovered, while the King's Commiſſion is Reading.

All the Peers Stood up, and were Uncovered, while the Commiſſion was Read.

Clerk of the Crown. *GUlielmus Tertius Dei Gratia Angl. Scoc. Franc. & Hibern. Rex Fidei Defenſor &c. Prædilecto & fideli Conſiliar. noſtro Johanni Domino Somers Cancellar. noſtro Angl. Sciatis quod Cum Edrus. Comes Warwic. & Holland nuper de Paroch. Sci. Martini in Campis in Com. Middleſex. & Carolus Dominus Mohun nuper de Paroch. prædict. in Com. prædict. coram dilectis & fidelib. noſtris Carolo Lee Milit. Samuel. Buck Willielmo Withers & Franciſco Tyſſon Armigeris & aliis ſociis ſuis Juſticiar. noſtris ad inquirend. per Sacramentum probor. & legalium hominum de Com. noſtro Middleſex. prædict. ac aliis viis modis & mediis quibus melius ſciverint aut poterint tam infra libertat. quam extra per quos rei veritas melius ſciri poterit & inquiri de quibuſcunque proditionibus Miſpriſionibus prodition. Inſurrectionib. Rebellionib. Controfact. tonſur. lotur. falſis fabricationib. & aliis falſitat. Monet. hujus Regni noſtri Angl. & alior. Regnor. ſive Dominior. quorum cunque ac de quibuſcunque Murdris Feloniis Homicid. Interfectionibus Burglar. Raptib. Mulier. Congregationib. & Conventicul. illicit. verbor. prolationib. Coadunationib. Miſpriſionib. Confederationibus falſis Allegantiis Tranſgreſſionibus Riotis Routis Retentionib. Eſcapiis Contempt. Falſitat. Negligentiis Concelament. Manutenent. Oppreſſionibus Cambiparciis Deceptionib. & aliis Malefactis Offenc. & Injur. quibuſcunque Necnon Acceſſar. eorundem infra Com. prædict. tam infra libertat. quam extra per quoſcunque & qualitercunque habit. fact. perpetrat. ſive commiſſ. & per quos vel per quem cui vel quibus quando qualiter & quomodo & de aliis Articul. & Circumſtanc. præmiſs. ſeu eor. alicujus vel aliquor. qualitercunque concernen. plenius veritat. & ad eaſdem proditiones & al. præmiſſ. audiend. & terminand. ſecundum legem & conſuetud. Regni noſtri Angl. nuper aſſignat. de Felonia & Murdro per ipſos Edrum. Comitem Warwic. & Holland & Carolum Dominum Mohun Commiſſ. & Perpetrat. per ſacrament. probor. & legal. hominum Com. noſtri Middleſex. prædict. Indictat. Exiſtunt Nos conſiderantes quod Juſtitia eſt virtus excellens & altiſſimo complacens Volenteſque quod prædict. Edrus. Comes Warwic. & Holland & Carolus Dominus Mohun de & pro Felonia & Murdro unde ipſi ut præfertur Indictat. exiſtunt. coram Nob. in preſenti Parliament. noſtro ſecundum Leg. & conſuetud. Regni noſtri Angl. Audiantur Examinantur ſententientur & Adjudicentur Cæteraque omnia quæ in hac parte pertinent debo. modo exerceantur & exequantur; Ac pro eo quod Officium Seneſchalli Angl. (cujus præſentia in hac parte requiritur ut Accepimus jam vacat) Nos de Fidelitate Prudentia provida Circumſpectione & Induſtria veſtris plurimum confidentes Ordinavimus & Conſtituimus vos ex hac cauſa Seneſchallum Angl. ad Officium illud cum omnibus eidem Officio in hac parte debit. & pertinen. (hac vice) gerend. occupand. & exercend. Et ideo vob. Mandamus quod circa præmiſſ. diligenter intendatis & ea omnia quæ in hac parte ad Officium Seneſchal. Angl. pertinent & requiruntur (hac vice) faciatis exerceatis & exequamini cum effectu. In Cujus rei Teſtimonium has literas noſtras fieri fecimus*

Patentes

Patentes Teſte meipſo. apud Weſtmonaſterium viceſimo quinto die Martii Anno Regni noſtri Undecimo.

Per Ipſum Regem propria Manu Signat.

Serjeant at Arms. God Save the King.

Then the Herald and the Gentleman Uſher of the Black Rod, after three Reverences, Kneeling, preſented the White Staff to his Grace, and his Grace removed from the Woollpack to the Chair, which was placed upon an Aſcent juſt before the uppermoſt Step of the Throne, and ſeated himſelf in the Chair.

Clerk of the Crown. Serejant at Arms make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes, My Lord High Steward of *England*, his Grace, does Straightly Charge and Command all manner of Perſons here preſent, to be Uncovered, upon Pain of Impriſonment.

Then the Judges and Maſters in *Chancery* ſat down in their Places upon the Woollpack, uncovered.

Then the Clerk of the Crown Read the Return of the *Certiorari in hæc verba.*

Gulielmus Tertius Dei Gratia. Angl. Scoc. Franc. & Hibern. Rex Fidei Defens. &c. Juſtic. noſtris. per Literas. noſtras. Paten. confect. ad inquirend. per Sacrm. probor. & legal. hom. Com. noſtri. Midd. ac aliis viis mod. & med. quibus melius ſciverint aut poterint de quibuſcunq; prodic. miſpriſ. prodic. inſurrection. Rebellion. controfact. tanſur. latur. falſis fabricac. & aliis falſitat. monet. hujus Regni Angl. & alior. Regnorum ſive Dominiorum quorumcunq; ac de quibuſcunq; murdris felon. homicid. interfection. burglar. raptibus mulierum congregacon. & conventicul. illicit. verborum prolationibus coadunat. miſpriſion. confederat. falſis Allegianc. tranſgreſ. riot. rout. retention. eſcapiis contempt. negligenc. concelament. maintenen. oppreſion. deception. & aliis malefactis offenſ. & injur. quibuſcunq; Necnon acceſſariis eorundem infra Com. prædict. tam infra libertates quam extra per quoſcunq; & qualitercunq; habit. fact. perpetrat. ſive commiſſ. ac de aliis articulis & circumſtanciis premiſſ. & eorum quodlibet ſeu eorum aliquod vel aliqua qualitercunq; concernen. plenius veritat. & ad eaſdem Prodition. & al. præmiſſ. audiend. & terminand. Aſſign. Necnon Juſtic. noſtris ad Gaol. noſtram de Newgate de priſonar. in ea exiſten. deliberand. Aſſign. & eorum cuilibet Saltm. Volen. certis de cauſis omnia & ſingula Indictament. & Inquiſition. de quibuſcunq; felon. & murdris unde Edrus. Comes Warwic. & Holland & Carolus Dominus Mohun & al. coram vobis Indictat. ſunt Necnon Record. conviction. Rici. French Rogeri James & Georgii Dockwra pro felon. & homicid. unde Indictat. ſunt Et ſuperinde per quandam. Jur. Prie. inde inter nos & prefat. Richardum French Rogerum James & Georgium Dockwra capt. convict. exiſt. ut dicitur coram nobis & non alibi terminari vobis & cuilibet veſtrum mandamus quod omnia & ſingula in Indictament. & Record. Convict. prædict. cum omnibus ea tangen. quibuſcunq; nominibus iidem Edrus. Comes Warwic. & Holland Carolus Dominus Mohun Richardus Rogerus & Georgius nuncupentur in eiſdem coram nobis ſub ſigillis veſtris aut unius veſtrum in octab. ſci. Hillarii ubicunq; tunc fuerimus in Angl. mittat. ſen unus veſtrum mittat una cum hoc brevi ut ulterius inde fieri fac. quod de jure ac ſecundum legem & conſ. regni noſtri Angl. fore viderimus faciend. Teſte J. Holt Mil. apud Weſtm. xxviii die Novembris Anno regni noſtri Decimo

per Cur. *Aſtry*

Ad inſtanc. proſecutor. quoad duos Def. & ad inſtanc. cæterorum Def.

J. Holt.

Virtute cujus brevis mihi & aliis direct. Indictament. & Inquiſition. inframentionat. necnon Record. conviction. infranominat. Rici. French Rogeri James & Georgii Dockwra pro felon. & homicid. unde Indictat. & ſuperinde per quandam Jur. prie. convict. exiſt.

exist. cum omnibus ea tangen. coram Dom. Rege in quibusdam Sched. huic brevi annex. mitto prout interius præcipitur.

Respons. Fra. Child Mil. Major. Civit. Lond. un. Justic. infrascript.

Midd. ss. Memorandum quod ad deliberation. Gaol. Domini Regis de Newgate tent. pro Com. Middlesex. apud Justice-Hall in le Old Bally in Suburbiis Civit. Lond. die veneris (scilt.) decimo tertio die Januarii Anno Regni Dom. nostri. Gulielmi tertii Dei gra. nunc Regis Angl. &c. Decimo coram Fran. Child Mil. Majore Civit. London. Edro. Ward Mil. Capital. Baron. Sccii. dict. Dom. Regis Henrico Hatsell Milit. un Baron. Sccii. Dicti Domini Regis Thoma Stamp Mil. Edro Clarke Mil. Aldris. dict. Civit. London Salathiel. Lovell Mil. servien. dict. Dom. Regis ad legem ac Recordator. dict. Civit. London & aliis sociis suis Justic. dict. Dom. Regis ad Gaol. ipsius Dom. Regis de Newgate prædict. de prisonar. in eadem existen. delibaud. assign. ven. hic in Cur. Carolus Lee Mil. Samuel Buck Will. Withers & Fran. Tyssen Ar. Justic. dict. Dom. Regis per Literas patent. ipsius Dom. Regis eisdem Justic. prænoiat. & aliis ac quibuscunq; quatuor vel plur. eorum sub magno Sigillo dict. Dom. Regis Angl. confect. ad inquirend. per Sacrament. probor. & legal. hom. de Com. Midd. præd. ac aliis viis modis & mediis quibus melius sciverint aut poterint tam infra libertat. quam extra per quos rei veritas sciri poterit de quibuscunq; prodition. misprision. prodition. insurrection. rebellion. controscur. tonsur. lotur. falsis fabrication. & al falsitat. monetæ hujus Regni dict. Dom. Regis Angl. & al. Regnorum sive Domin. quorumcunq; ac de quibuscunq; murdris felon. homicid. interfeccon. burglar. Rapt. mulier. congregac. & conventicul. illicit. verborum prolation. Coadunac. misprision. Confederac. falsis Alleganc. transgr. Riot. Rout. retention. escapiis contempt. negligenc. concelamen. manutenen. oppression. Cambi-parciis Deception. & aliis Mulefact. & Offenc. quibuscunq; Nec non accessar. eorund. infra Com. pred. tam infra libertat. prædict. quam extra per quoscunq; & qualitercunq; habit. fact. perpetrat. sive commiss. ac de aliis articul. & Circumstanc. premissa & eorum quodlibet seu eorum aliquod vel aliqua qualitercunq; concernen. plenius veritat. & ad easdem prodition. & al. premissa audiend. & terminand. Secundum. legem & consuetud. hujus Regni dict. Dom. Regis Angl. Assign. & per manus suas propr. deliberaver. hic in Cur. dict. Dom. Regis quoddam Record. Iudictament. coram eis & aliis sociis suis nuper præantea presentat. & capt. versus Edrum. Comit. Warwic. & Holland Carolum Dominum Mohun de Oakehampton in Com. Devon. Ricum. French Rogerum James & Georgium Dockwra pro murdro cujusdam Ricī. Coote Ar. in forma juris terminand. &c. (eisdem Rico. French Rogero James & Georgio Dockwra prisonar. in dict. Gaol. dict. Dom. Regis de Newgate ex causa in eodem Indictament. content. adtunc. existen.) Record. cujus quidem Indictament. patet in quibusdam Schedul. huic annex.

Midd. ss. Memorandum quod ad Sessionem de Oyer & Terminer Domini Regis tent. pro Com. Middlesex. apud Hicks-hall in S. John-street in Com. præd. die Mercurii scil. septimo die Decembris Anno Regni Domini nostri Gulielmi Tertii Dei gratia nunc Regis Angliæ &c. decimo coram Carolo Lee Mil. Samuele Buck, Willielmo Withers, Francisco Tyssen Armigeris & aliis Sociis suis Justic. dict. Dom. Regis per Literas Paten. ipsius Dom. Regis eisdem Justic. prænominat. & al. ac quibuscunque quatuor vel pluribus eorum sub magno Sigillo dict. Domini Regis Angliæ confect. ad inquirend. per sacrament. probor. & legalium hom. Com. Middlesex. præd. ac aliis viis mod. & med. quibus melius sciverint aut poterint tam infra libertat. quam extra per quos rei veritas melius sciri poterit de quibuscunque prodition. misprision. prodition. insurrection. rebellion. controfactur. tonsur. lotur. falsis fabrication. & aliis falsitat. monet. hujus Regni dict. Dom. Regis Angl. & al. Regnor. sive Dominior. quorumcunque ac de quibuscunque murdris felon. homicid. interfection. burglar. rapt. Mulier. congregat. & conventicul. illicit. verborum prolation. coadunat. misprision. confederat. falsis allegan. transgr. riot. rout. retention. escapiis contempt. negligen. concelamen. manutenen. oppression. cambiparciis deception. & aliis malefactis & offensis quibuscunque necnon Accessar. eorun-

dem

idem infra Com. præd. tam infra libertat. quam extra per quoscunque & qualitercunque habit. fact. perpetrat. sive commiss. ac de aliis articulis & circumstantiis premissa & eor. quodlibet vel aliqua qualitercunque concernen. plenius veritat. & ad easdem prodition. & al. præmiss. audiend. & terminand. secund. legem & cons. hujus Regni dicti Dom. Regis Angl. assignat per sacrm. Egidii Riddle, Richardi Read, Roberti Leg, Josephi Partherich, Johannis Marriott, Jonathan Hall, Nicolai Baker, Roberti Teague, Thomæ Briggs, Willielmi Brace, Thomæ Williams, Georgii Bishopp, Thomæ Hodges, Johannis Lynn, Samuelis Lee, Richardi Rogers, Josephi Rogers, Johannis Cheney, Johannis Fowler, & Roberti Nicholson, probor. & legalium hominum Com. præd. adtunc & ibidem jurat. & onerat. ad inquirend. pro dicto Dom. Rege & corpore Com. præd. præsentat. existit qd. Billa Indictamenti hinc Schedul. annex. est vera.

Midd. ss. Jurator. pro Domino Rege super sacrum. suum præsentant quod Edwardus Comes Warwic. & Holland. nuper de Paroch. S. Martin in campis in Com. Middlesex. Carolus Dominus Mohun Baro Mohun de Oakehampton in Com. Devon nuper de Paroch. præd. in Com. Middlesex. præd. Richardus French nuper de Paroch. præd. in Com. Middlesex. præd. Gen. Rogerus James nuper de Paroch. præd. in Com. Middlesex præd. Gen. & Georgius Dockwra nuper de Paroch. præd. in Com. Middlesex. præd. Gen. Deum pre oculis suis non habentes sed instigatione diabolica moti & seducti Tricesimo die Octobris Anno Regni Domini Gulielmi tertii Dei gra. Angl. Scoc. Franc. & Hibern. Regis fidei defens. &c. decimo vi & armis &c. apud paroch. præd. in Com. Middlesex. præd. in & super quendam Richardum Coote Ar. in pace dei & dicti Domini Regis nunc adtunc & ibidem existen. felonice voluntarie & ex malitiis suis præcogitat. insult. fecer. & qd. præd. Edwardus Comes Warwic. & Holland. cum quodm. gladio, (Anglice a Sword) de ferro & chalibe confect. valor. quinque solidor. quem ipse idem Edwardus Comes Warwic. & Holland. in manu sua dextra adtunc & ibidem extract. habuit & tenuit præfat. Richardum Coote in & super sinistram partem pectoris ipsius Richardi Coote prope os Collar. (Anglice the Collar Bone) *ipsius Richardi Coote adtunc & ibidem felonice voluntarie & ex malitia sua præcogitat. percussit pupugit & inforavit (Anglice* did Strike Stab and Thrust in) *dans eidem Richardo Coote adtunc & ibidem cum gladio extracto præd. in & super dict. sinistram partem Pectoris ipsius Rici. Coote prope Os Collar. (anglice* the Collar Bone) *ipsius Rici. Coote unum vulnus mortal. (anglice* one Mortal Wound) *latitud. dimidii unius pollicis & profunditat. quinq; pollicium De quo quidem vulnere mortal. pred. Ricus. Coote adtunc & ibm. instanter obiit Et qd. pred. Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra adtunc & ibm. felonice voluntarie & ex maliciis suis precogitat. fuer. presen. auxilian. abettan. confortan. assisten. & manutenen. prefat. Edrum. Comit. Warwic. & Holland. ad prefat. Ricum. Coote modo & forma predis felonice voluntarie & ex malicia sua precogitat. interficiend. & murdrand. Et sic Jur. pred. super sacrm. suum pred. dic. qd. pred. Edrus. Comes Warwici & Holland. Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra prefat. Ricum. Coote modo & forma pred. felonice voluntarie & ex maliciis suis precogitat. interfecer. & murdraver. Contra pacem dei. Domini Regis nunc Coron. & Dignitat. suas &c.*

Ricus. French 13 *Januar.* 98. *pon. se Cul. de Felon. & Homicid. tam. Non cul. de Murdro. Catalla nulla. Pet. Librum. Legit ut Clericus. Crematio respectuatur quousq; &c.*

Rogerus James 13 *Jan.* 98. *pon. se cul. de Felon. & Homicid. tant. Non cul. de Murdro. Catalla nulla. Petit Librum. Legit ut Clericus. Crematio respectuatur quousq; &c.*

Billa vera. *Samuel Cowthorve de paroch. ſci. Martini in Campis in Com. Midd. Yoman,*
Willus. Cripps de paroch. pred. in Com. pred. Yoman,
Henricus Pomfret de paroch. pred. in Com. pred. Yoman,
Willus. Salmon de paroch. pred. in Com. pred. Chirurgus,
Robtus. Applegate de paroch. pred. in Com. pred. Yoman.

Jur. in Cur.

Midd. ſſ. Memorand. qd. ad Deliberation. Gaole Dni. Regis de Newgate tent. pro Com. Midd. apud Juſtice-Hall in le Old Bailey in Suburbiis Civitat. London. die Mercurii Scilt. Septimo die Septembris Anno Regni Dni. nri. Gulielmi tercii Dei gra. Angl. Scoc. Franc. & Hibnie. Regis Fidei defens. &c. decimo coram Franco. Child Mil. Majore Civitat. London. Georgio Treby Mil. Capital. Juſtic. dci Dni. Regis de Banco Littleton Powis Mil. uno Baron. Sccii dict. Dni. Regis Thoma Stamp Mil. Edro. Clarke Mil. Aldris. dict. Civitat. London. Salathiel Lovell Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dict. Civitat. London. & aliis Sociis ſuis Juſtic. dci. Dni. Regis ad Gaolam ipſius Dni. Regis de Newgate pred. de Priſonar. in eadem exiſten. deliberand. aſſign. ven. Robertus White gen. Coronator dci. Dni. Regis infra Libertat. Decani & Capituli Ecclie. Collegiat. bti. Petri Weſtm. Civitat. Burgi & Ville Weſtm. in Com. Midd. pred. Et per manus ſuas proprias deliberavit hic in Cur. quandam Inquiſicon. de morte Rici. Coote Ar. coram eo nuper capt. in Cur. hic de Recordo in forma juris terminand. Que quidem Inquiſtio huic Schedule annex. eſt

pon. ſe

Civitas, Burgus & Villa. Weſtm. in Com. Midd. } *ſſ. Inquiſitio indentat. capt. pro Dno. Rege apud paroch. ſci. Martini in Campis infra Libertat. Decani & Capitli. Eccleſie Collegiat. bti. Petri Weſtm. Civitat. Burgi & Ville Weſtm. in Com. Midd. triceſimo die Octobris Anno Regni Dni. nri. Gulielmi tertii Dei gra. Angl. Scoc. Franc. & Hibernie Regis Fidei defenſoris &c. decimo Coram Roberto White gen. Coronatore dci. Dni. Regis Libertat. pred. ſuper viſum Corporis cujuſdam Rici. Coote Ar. ibm. jacen. mort. per ſacrm. Johis. Harris Petri Solmon Rici. Newgent Willi. Fryer Samuelis Thomſon Jacobi Timberlick ſen. Jacobi Timberlick jun. Rici. Jackson Johis. Finch Samuelis Powell Samuelis Dimont Robti. Giltrick Johis. Paulin Joſephi Vernon Thome Smithſon Andreæ Rogers & David Jones proborum & legium. homin. Libertat. pred. jurat. & onerat. ad inquirend pro dco. Deo. Rege quando qualiter & quomodo prefat. Ricus. Coote ad mortem ſuam devenit dicunt ſuper ſacrm. ſuum pred. qd. Edrus. Comes Warwic. & Holland. nuper de paroch. ſci. Martini in Campis infra Libertat. pred. in Com. pred. Carolus Dnus. Mohun nuper de paroch. pred. infra Libertat. pred in Com. pred. Ricus. French nuper de paroch. pred. infra Libertat. pred. in Com. pred. gen. Rogerus James nuper de paroch. pred. infra Libertat. pred. in Com. pred. gen. & Georgius Dockwra nuper de paroch. pred. infra Libertat. pred. in Com. pred. gen. Deum præ oculis ſuis non heutes. ſed Inſtigatione diabolica moti & ſeducti dco. triceſimo die Octobris Anno decimo ſupradicto vi & armis &c. apud paroch. pred. infra Libertat. pred. in Com. pred. in & ſuper prefat. Ricum. Coote in pace Dei & dci. Dni. Regis. nunc adtunc & ibm exiſten. felonice voluntarie & ex maliciis ſuis precogitat. inſult. fecer. & qd. pred. Ricus French cum quodam Gladio (anglice a Rapier) de ferro & chalibe confect. valoris quinq; ſolid. quem ipſe idem Ricus. French in manu ſua dextra adtunc & ibm. extract. huit. & tenuit prefat. Ricum. Coote in & ſuper ſiniſtram partem Pectoris ipſius Rici. Coote prope Os Collar. (anglice the Collar Bone) ipſius Rici Coote adtunc & ibm. felonice voluntarie & ex malicia ſua precogitat. percuſſit & pupugit dans eidem Rico. Coote adtunc & ibm. cum Gladio pred. extract. in & ſuper pred. ſiniſtram partem pectoris ipſius Rici. Coote prope dict. Os Collar. ipſius Rici. Coote unum vulnus mortale longitudinis dimid. unius Pollicis & profunditatis quinq; Pollicium de quo quidem vulnere mortali pred. Ricus. Coote apud paroch. pred. infra Libertat. pred. in Com. pred. inſtanter obiit Et qd. predicti Edrus. Comes Warwic. & Holland. Carolus Dnus. Mohun Rogerus James & Georgius Dockwra adtunc & ibm.*

felonice

felonice voluntarie & ex maliciis ſuis precogitat. fuer. preſentes auxiliantes abettantes confortantes aſſiſtentes & manutentes prefat. Ricum. French ad predictum Ricum. Coote in forma pred. felonice voluntarie & ex malicia ſua precogitat. interficiend. & murdrand. Et ſic Jur. pred. dicunt ſuper ſacrm. ſuum pred. quod pred. Edrus Comes Warwici & Holland. Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra prefat. Ricum. Coote modo & forma predict. felonice voluntarie & ex maliciis ſuis precogitat. interfecer. & murdraver. contra pacem dci. Dni. Regis nunc Coron. & Dignitat. ſuas &c. Et ulterius Jur. pred. dicunt ſuper ſacrum. ſuum pred. qd. immediate poſt Feloniam & Murdrum pred. per ipſos modo & forma pred. fact. & perpetrat. apud Paroch. pred. infra Libertat. pred. in Com. pred. fugam. fecer. Quæ bona & catalla terras ſive tenementa pred. Edrus. Comes Warwici & Holland Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra tempore Felonie & Murdri predict. per ipſos modo & forma pred. fact. & perpetrat. ſive aliquo tempore poſtea uſque diem Captionis hujus Inquiſitionis habuerunt Jur. pred. penitus ignorant. In cujus Rei Teſtimonium tam prefat. Coronator quam Jur. pred. huic Inquiſitioni Sigilla ſua alternatim appoſuerunt die anno & loco primo ſupradcit.

Ricus. French 13 *Jan.* 98. *pon. ſe cul. de felon. & homicidio tant. Non cul. pro Murdro, Catal. nulla. Judicium ſuper Indictamentum.*

Rogerus James 13 *Jan.* 98. *pon. ſe cul. de felon. & homicid. tant. Non cul. pro Murdro. Catalla nulla. Judicium ſuper Indictamentum.*

Georgius Dockwra 13 *Jan.* 98. *pon. ſe cul. de felon. & homicid. tantum. Non cul. pro Murdro. Catalla nulla. Judicium ſuper Indictamentum.*

Midd. ſſ. Memorandum qd. ad Seſſionem de Oyer & Terminer Domini Regis tent. pro Com. Middleſex. apud Hicks-hall in S. John-ſtreet in Com. præd. die Mercurii ſcilt. ſeptimo die Decembris Anno Regni Domini noſtri Gulielmi Tertii Dei gratia nunc Regis Angliæ &c. decimo coram Carolo Lee Mil. Samuele Buck Willielmo Withers Franciſco Tyſſon Armigeris & aliis Sociis ſuis Juſtic. dict. Dom. Regis per Literas Paten. ipſius Dom. Regis eiſdem Juſtic. prænominat. & al. ac quibuſcunque quatuor vel pluribus eorum ſub magno Sigillo dict. Dni. Regis Angliæ confect. ad Inquirend. per ſacrm. probor. & legalium hom. de Com. Middleſex. præd. ac aliis viis mod. & med. quibus melius ſciverint aut poterint tam infra Libertates quam extra per quos rei veritas melius ſciri poterint & inquiri de quibuſcunque Prodition. Miſpriſion. Prodition. Inſurrection. Rebellion. Controfactur. Tonſur. Latur. & falſis Fabrication. & aliis Falſitat. Monet. hujus Regni dict. Dom. Regis Angliæ & aliorum Regnorum ſive Dominior. quorumcunque ac de quibuſcunque Murdris Feloniis Homicidiis Interfection. Burglar. Rapt. Mulier. congregat. & conventicul. illicit. Verborum prolation. coadunat. Miſpriſion. Confederat. falſis Alleganc. Tranſgr. Riot. Rout. Retention. Eſcapiis Contempt. Negligen. Concelamen. Manutenen. Oppreſſionibus Cambiparciis Deception. & aliis Malefactis & Offenſis quibuſcunque necnon Acceſſar. eorundem infra Com. pred. tam infra Libertat. quam extra per quoſcunq; & qualitercunq; habit. fact. perpetrat. ſive commiſſ. Ac de aliis Articulis & Circumſtantiis premiſſa & eorum quodlibet ſeu eorum aliquod vel aliqua qualitercunque concernen. plenius veritat. Et ad eaſdem Proditiones & alia Premiſſa audiend. & terminand. ſcdm. Legem & Conſ. hujus Regni dci. Dni. Regis Anglie aſſign. per ſacrm. Egidii Riddle Rici. Read Roberti Legg Joſephi Partherich Johis. Marriot Jonathan Hall Nicholai Barker Roberti Teague, Thome Briggs Willi Brace Thome Williams Georgii Biſhop Thowe Hodges Johis. Lynn Samuelis Lee Rici. Rogers Johis. Cheney Johis. Fowler & Roberti Nicholſon proborum & legalium Hominum Com. pred. & tunc & ibm. jurat. & onerat. ad inquirend. pro. dco. Dno. Rege & corpore Com. pred. preſentat. exiſtit qd. Edrus. Comes Warwici & Holland. nuper de Paroch. S. Martini in campis in Com. pred. Carolus Dnus. Mohun Baro Mohun de Oakhampton in Com. Devon nuper de Paroch. pred. in Com. Midd. pred. Ricus. French nuper de Paroch. pred. in Com. Midd. pred. gen. Rogerus James nuper de paroch. pred. in Com. Midd. pred. gen. & Georgius Dockwra nuper de paroch. pred. in Com. Midd. pred. gen. Deum pre oculis ſuis non hentes. ſed inſtigatione diabolica mot. & ſeduct. 30 die Octobris Anno Regni Gulielmi tertii Dei gratia Angl. Scoc.

Scoc. Franc. & Hibernie Regis fidei defensoris &c. decimo vi & armis &c. apud parioch. pred. in Cow. Midd. pred. in & super quendam Ricum Coote Ar. in pace Dei & dci. Dni. Regis nunc adtunc & ibidem. existen. felonice voluntarie & ex maliciis suis precogitat. insult. fecer. Et qd. pred. Comes Warwici & Holland. cum quedam Gladio (anglice a Sword) de ferro & Chalibe confect. valoris quinq; solid. quam ipse idem Edrus. Comes Warwici & Holland. in manu sua dextra adtunc & ibm. extract. huit & tenuit præfat. Ricum. Coote in & super sinistram partem Pectoris ipsius Rici. Coote prope Os Collar. (anglice the Collar Bone) ipsius Rici. Coote adtunc & ibm. felonice voluntarie & ex malicia sua precogitat. percussit pupugit & inforavit (anglice, did strike, stab, and thrust in.) Dans eidem Rico. Coote adtunc & ibm. cum Gladio extract. pred. in & super dict. sinistram partem pectoris ipsius Rici. Coote prope Os Collar. (anglice the Collar Bone) ipsius Rici. Coote unum Vulnus Mortale (anglice, one Mortal Wound) latitudinis dimidii pollicis & profunditatis quinq; pollicium de quo quidem vulnere mortali pred. Ricus Coote adtunc & ibm. instanter obiit Et qd. pred. Coronus Dnus. Mohun Ricus. French Rogerus James & Georgius Docwra adtunc & ibm. felonice voluntarie & ex maliciis suis precogitat. fuer. presentes auxiliantes abettantes confortantes assistentes & manutenentes prefat. Edrum. Comitem Warwici & Holland. ad prefat. Ricum. Coote modo & forma pred. felonice voluntarie & ex malicia sua precogitata interficiend. & Murdrand. Et sic Jur. pred. super sacrm. suum pred. dicunt qd. predict. Edrus. Comes Warwici. & Holland. Carolus Dnus. Mohun Ricus French Rogerus James & Georgius Dockwra prefat. Ricum. Coote modo & forma pred. felonice voluntarie & ex maliciis suis precogitatis interfecer. & murdraverunt contra pacem dci. Dni. Regis nunc Coron. & Dignitat. suas &c. Per quod Preceptum est Vic. Midd. qd. non omnitteret &c. quin caperet predictos Edrum. Comitem Warwici & Holland. Carolum Dnum. Mohum Ricum. French Rogerum James & Georgium Dockwra ad respondend. &c. Quod quidem Indictamentum prefat. Justic. dci. Dni. Regis (per dcas. Literas paten. ipsius Dni. Regis eisdem Justic. prenominat. & aliis ac quibuscunq; quatuor vel pluribus eorum sub magno Sigillo dci. Dni. Regis Anglie ut prefertur confect.) postea scilt. ad Deliberationem Gaole dci. Dni. Regis de Newgate tent. pro Com. Midd. pred. apud Justice-Hall in le Old-Baily in Suburbiis Civitat. Lond. dco. die Mercurii scilt. septimo die ejusdem Mensis Decembris Anno Regni dci. Dni. Regis nunc decimo supradicto coram Francisco Child Mil. Majore Civitat. London. Georgio Treby Mil. Capital Justic. dci. Dni. Regis de Banco Littleton Powis Mil. uno Baronum Sccii. dci. Dni. Regis Thoma Stampe Mil. Edro. Clarke Mil. Aldris. dce. Civitat. London. Salathiel Lovell Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dce. Civitatis London. & aliis Sociis suis Justic. dci. Dni. Regis ad Gaolam dci Dni Regis de Newgate pred. de Prisonar. in eadem existen. deliberand. assign. per manus suas proprias deliberaverunt hic in Cur. de Recordo in forma juris terminand. &c. Super quo postea scilt. ad deliberationem Gaole dci. Dni. Regis de Newgate pred. die Veneris scilt. 13 die Jan. Anno. Regni dci. Dni. Regis nunc decimo supradicto coram Francisco Child Mil. Majore Civitat. London. Edro. Ward Mil. Capital. Baron. Sccii. dci. Dni. Regis Henrico Hatsall Mil. uno Baron. Sccii. dci. Dni. Regis Thoma Stamp Mil. Edro. Clarke Mil. Aldris. dce. Civitat. London. Salathiel Lovell Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dict. Civitat. London. & aliis Sociis suis Justic. dci. Dni. Regis ad Gaolam ipsius Dni Regis de Newgate predict. de Prisonar. in eadem existen. deliberand. assign. vener. predict. Ricus. French Rogerus James & Georgius Dockwra sub Custod. Willi. Goare Militis & Josephi Smart Militis Vic. Com. pred. (in Custod. cujus ex causa pred. in Gaolam de Newgate pred. preantea commissi fuer.) Ad Barram hic duct. in propriis personis suis & statim de Premissis in Indictamento pred. superius specificat. eis superius separatim imposit. separatim allocut. qualiter se velint inde acquietari iidem Ricus. French Rogerus James & Georgius Dockwra separatim dicunt qd. ipsi non sunt inde Culpabiles nec aliquis eorum est inde Culpabilis & inde de bono & malo separatim pon. se super Priam. &c. Jo. immediate ven. inde Jura. coram prefat. Justic. dci. Dni. Regis ult. noiat. hic &c. Et qui nec &c. Ad recogn. &c. Et Jur. Jure. ill. per prefat. Vic. ad hoc impanellat. (scilt.) Chrus. Rednap, Thomas Moody, Thomas Dunck, Simo Smith, Johes. Smith, Michael Miles, Thomas Rowell, Nathaniel Lee, Josephus

Deveniſh,

Devenish, Henricus Bradbury, Willus. Giles, & Johes. Burgoyne exacti venier. qui ad veritat. de & super Premissis pred. dicend. electi triati & jurati dicunt super Sacrum. suum qd. pred. Ricus. French Rogerus James & Georgius Dockwra sunt Culpabiles Et quilibet eorum est Culpabilis de Homicidio & felonica Interfectione prefat. Rici. Coote in Indictamento pred. superius noiat. Et qd. iidem Ricus. French Rogerus James & Georgius Dockwra tempore Felonie & Homicidii pred. per ipsos Ricum. French Rogerum James & Georgium Dockwra in forma pred. commiss. seu unquam postea non fuer. nec aliquis eorum fuit. nec fuit. nec aliquis eorum fuit. aliqua bona seu catalla terras seu tenementa ad Noticiam Jur. pred. Sed. iidem Jur. ulterius dicunt super sacrum suum pred. qd. pred. Ricus. French Rogerus James & Georgius Dockwra non sunt Culpabiles nec eorum aliquis est Culpabilis de Murdro pred. in Indictamento pred. superius specificat. eis superius separatim imposit. prout iidem Ricus. French Rogerus James & Georgius Dockwra pro seipsis superius pluando. allegaver. nec seipos ea occone. unquam retraxer. nec eorum aliquis se ea occone. unquam retraxit Super quo visis & per Cur. hic intellectis omnibus & singulis premissis Cons. est per Cur. hic qd. pred. Ricus. French Rogerus James & Georgius Dockwra quoad Murdrum pred. in Indictamento pred. superius spec. eis superius separatim imposit. sint quiet. Et eant & quilibet eorum sit quiet. & eat inde sine die &c. Et superinde statim separatim per Cur. hic quesit. est de prefat. Rico. French Rogero James & Georgio Dockwra si quid pro se habeant vel dicere sciant vel aliquis eorum aliquid pro se habeat vel dicere sciat quare Cur. hic ad Judicium & executionem de eis & eorum quolibet super Veredicto pred. quoad Homicidium & felonicam Interfectionem prefat. Rici. Coote procedere non debet Qui separatim dicunt qd. ipse sunt Clerici Et quilibet eorum est Clericus Et separatim petunt Beneficium Clericale eis & cuilibet eorum in hac parte allocari Et super hoc traditis eisdem Rico. French Rogero James & Georgio Dockwra separatim per Cur. hic Libro, iidem Ricus. French Rogerus James & Georgius Dockwra separatim legunt ut Clerici & quilibet eorum legit ut Clericus Sed quia Cur. dict. Dni. Regis hic & prefat. Justic. dci. Dni. Regis ult. noiat. de Judicio suo de & super Premissis pred. quoad Homicidium pred. & felonicam Interfectionem prefat. Rici. Coote reddend. nondum advisantur Ideo dies inde datur, est prefat. Rico. French Rogero James & Georgio Dockwra in statu quo nunc &c. usq; prox. Gaole deliberationem dci. Dni. Regis de Newgate pred. pro Com. Midd. pred. tenend. de Judicio suo de & super Premissis illis audiend. &c. Eo qd. prefat. Justic. dci. Dni. Regis ult. noiat. & Cur. hic inde nondum &c.

Lord High Steward. Is it your Lordships Pleasure that the Judges may be Covered?

Lords. Ay, Ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes, Chief Governor of the Tower of *London*, bring forth the Body of *Edward* Earl of *Warwick* and *Holland*, your Prisoner, forthwith, on Pain and Peril will fall thereon.

Then the Earl of *Warwick* was brought to the Bar by the Deputy Governor of the Tower of *London*, having the Ax carried before him by the Gentleman Jaylor, who stood with it at the Bar, on the Right Hand of the Prisoner, turning the Edge from him; The Prisoner at his Approach to the Bar making three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand; and his Grace and the Peers returned the Salute.

Lord High Steward. My Lord of *Warwick*, your Lordship is brought before this great Judicature, in order to your Tryal. You stand Indicted by the Grand Inquest for the County of *Middlesex*, as Guilty of the Murder of one of the King's Subjects, for whose Blood Justice requires a strict Inquisition should be made.

Your Lordſhip is call'd to Anſwer this Charge before the whole Body of the Houſe of Peers Aſſembled in Parliament. It is a great Misfortune to be Accuſed of ſo Hainous an Offence, and it is an addition to that Misfortune, to be brought to Anſwer as a Criminal before ſuch an Aſſembly, in Defence of Your Eſtate, your Life, and Honour. But it ought to be a ſupport to your Mind, ſufficient to keep you from ſinking under the Weight of ſuch an Accuſation, that you are to be Try'd before ſo Noble, Diſcerning, and Equal Judges, that nothing but your own Guilt can hurt you. No Evidence will be received, but what is Warranted by Law; No Weight will be laid upon the Evidence, but what is agreeable to Juſtice; No Advantage will be taken of your Lordſhip's little Experience in Proceedings of this Nature; Nor will it turn to your Prejudice, that you have not the aſſiſtance of Counſel in your Defence as to the Fact, (which cannot be allowed by Law) and their Lordſhips have already aſſigned you Counſel, if any Matters of Law ſhould ariſe.

Your Lordſhip throughout your whole Tryal, may aſſuredly promiſe your ſelf to find all the Candor and Compaſſion which is conſiſtent with Impartial Juſtice; beyond that nothing is to be expected: Their Lordſhips can never ſo far forget themſelves, as to depart from what is right, and to draw the guilt of Blood upon their own Heads, but if your Lordſhip is Innocent you are ſafe.

My Lord, It will be requiſite for you to recollect your ſelf upon this Occaſion in the beſt manner you can. You ought to hear with Temper what the King's Counſel have to ſay without interrupting them, and to hearken Carefully to the Witneſſes produced againſt you, that you may be ready to croſs Examine them if you find cauſe, and to make your Obſervations upon the Evidence when the proper time comes for your Lordſhip to make your Defence; of which I will not fail to give you Notice, and when that time does come your Lordſhip may be aſſured, your ſelf and your Witneſſes will be heard with great Patience, and Attention; and when my Lords have Heard and Conſidered the whole Matter, the Judgment will unqueſtionably be according to the Rules of Juſtice, and ſuch as will become the Honour of this High Court.

Read the Indictment to my Lord.

Earl of Warwick. My Lord, I beg I may have the uſe of Pen, Ink, and Paper.

L. H. Steward. Will your Lordſhips pleaſe to allow my Lord *Warwick* Pen, Ink, and Paper?

Lords. Ay, Ay.

L. H. Steward. Carry Pen, Ink, and Paper to my Lord; which was done by the Clerk.

L. H. Steward. My Lord, your Lordſhip will do well to give Attention while the Indictment is Read to you; Read it to my Lord in *Engliſh*.

Clerk of the Crown. YOur *Lordſhip Stands Indicted by the Name of* Edward *Earl of* Warwick *and* Holland, *late of the Pariſh of St.* Martin in the Fields *in the County of* Middleſex, *for that your Lordſhip, together with* Charles *Lord* Mohun, *Baron* Mohun of Oakehampton *in the County of* Devon, *late of the Pariſh aforeſaid in the County of* Middleſex *aforeſaid*, Richard French, *late of the Pariſh aforeſaid in the County of* Middleſex *aforeſaid*, Gent. Roger James, *of the Pariſh aforeſaid in the County of* Middleſex *aforeſaid*, Gent. *and* George Dockwra, *late of the Pariſh aforeſaid in the County of* Middleſex *aforeſaid*, Gent. *not having the Fear of God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil the 20th day of* October, *in the Tenth Year of the Reign of our Sovereign Lord* William *the Third, by the Grace of God King of* England, Scotland, France, *and* Ireland, *Defender of the Faith, &c. with Force and Arms, &c. at the Pariſh aforeſaid, in the County of* Middleſex *aforeſaid, in and upon one* Richard Coote *Eſq; in the Peace of God, and of our ſaid Sovereign Lord the King, then and there being Felloniouſly, Voluntarily, and of your Malice afore-thought, did make an Aſſault, and*

that

that your Lordſhip, the ſaid Edward *Earl of* Warwick *and* Holland, *with a certain Sword made of Iron and Steel of the value of 5 s. which you the ſaid* Edward *Earl of* Warwick *and* Holland, *in your Right Hand then and there had and held drawn, the aforeſaid* Richard Coote *in and upon the left part of the Breaſt of him the ſaid* Richard Coote, *near the Collar Bone of him the ſaid* Richard Coote, *then and there Feloniouſly, Voluntarily, and of your Malice afore-thought, did Strike, Stab, and Thruſt in, giving to the ſaid* Richard Coote, *then and there with the Sword drawn aforeſaid, in and upon the left part of the Breaſt of him the ſaid* Richard Coote, *near the Collar Bone of him the ſaid* Richard Coote, *one Mortal Wound of the breadth of half an Inch, and of the depth of 5 Inches, of which ſaid Mortal Wound the aforeſaid* Richard Coote *then and there inſtantly died; And that the aforeſaid* Charles *Lord* Mohun, Richard French, Roger James, *and* George Dockwra, *then and there Feloniouſly, Voluntarily, and of their Malice afore-thought, were preſent, aiding, abetting, comforting, aſſiſting, and maintaining you the ſaid* Edward *Earl of* Warwick *and* Holland, *the ſaid* Richard Coote, *in manner and form aforeſaid, Feloniouſly, Wilfully, and of your Malice afore-thought, to Kill and Murther, and ſo you the ſaid* Edward *Earl of* Warwick *and* Holland, *and the ſaid* Charles *Lord* Mohun, Richard French, Roger James, *and* George Dockwra, *the aforeſaid* Richard Coote, *in manner and form aforeſaid, Feloniouſly, Voluntarily, and of your Malice afore-thought, did Kill and Murder, againſt the Peace of our Sovereign Lord the King, that now is, His Crown and Dignity,* &c.

How ſay you *Edward* Earl of *Warwick* and *Holland*, are you guilty of this Felony and Murther whereof you ſtand Indicted, or not guilty?

Earl of Warwick. Not Guilty.

Clerk of the Crown. Culprit, How will your Lordſhip be Tried?

Earl of Warwick. By God and my Peers.

Clerk of the Crown. God ſend your Lordſhip good Deliverance.

Then at the Motion of ſome Lords who ſate towards the upper end of the Houſe, and by reaſon of the diſtance could not diſtinctly hear the Clerk, the Indictment was Read again, the Clerk ſtanding near the upper end of the Houſe.

Clerk of the Crown. Serjeant at Arms make an O Yes.

Serjeant at Arms. O Yes, O Yes, O Yes, If any one will give Evidence on behalf of our Sovereign Lord the King, againſt *Edward* Earl of *Warwick* and *Holland*, of the Felony and Murther whereof he ſtands Indicted, let them come forth, and they ſhall be heard, for now he ſtands at the Bar upon his Deliverance.

L. H. St. Will your Lordſhips give me Leave to go down to the Woolpack that I may hear the better.

Lords. Ay, Ay.

Then his Grace removed to the Woolpack, and delivered the White Staff to be held by the Gentleman Uſher of the Black Rod, who during the whole Tryal always received and delivered back the White Staff upon his Knee.

L. H. St. Mr. Attorney, are you ready to proceed?

Mr. At. Gen. Yes, my Lord.

L. H. St. Then begin Sir.

Mr. Serj. Wright. May it pleaſe your Lordſhips.

L. H. St. Pray, Mr. Serjeant, raiſe your Voice as much as poſſible you can, that my Lords towards the upper end of the Houſe may hear.

Mr. Serj. Wright. May it pleaſe your Lordſhips, this Noble Lord *Edward* Earl of *Warwick* and *Holland*, the Priſoner at the Bar, ſtands Indicted for the Felonious Killing and Murder of one *Richard Coote* Eſq; and the Indictment ſets

sets forth, That upon the 30th day of *October*, in the Tenth Year of His Majesty's Reign, at the Parish of St. *Martin in the Fields*, in the County of *Middlesex*, the Prisoner at the Bar, the Earl of *Warwick*, together with *Charles* Lord *Mohun* Baron of *Oakehampton*, *Richard French*, *Roger James*, and *George Dockwra*, Gent. Feloniously, Voluntarily, and of their Malice afore-thought, did make an Assault upon the said *Richard Coote*, in the Indictment named, and the Indictment chargeth, that the Earl of *Warwick*, at the same time and place, with a Sword, Feloniously, Voluntarily, and of his Malice afore-thought, did give unto the said *Richard Coote*, in or upon the left part of the Breast of him the said *Richard Coote*, near his Collar Bone, one Mortal Wound of the breadth of half an inch, and of the depth of five Inches, of which said Wound the said *Richard Coote* then and there instantly died; And the Indictment further Charges, that the said *Charles* Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, the Earl of *Warwick*, to commit the Felony and Murder aforesaid, were then and there aiding, assisting, comforting, and abetting; and so the Jurors Charge, That he the said *Edward* Earl of *Warwick* and *Holland*, *Charles* Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, the said *Richard Coote* Feloniously, Voluntarily, and of their Malice afore-thought, at the Parish aforesaid, in the County aforesaid, did Kill and Murder, against the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment this Noble Lord, the Prisoner at the Bar, *Edward* Earl of *Warwick* and *Holland*, has Pleaded Not Guilty, and for his Tryal hath put himself upon My Noble Lords his Peers here present; We shall call our Evidence, and if we prove this Fact for the King, we do not doubt but your Lordships will give such Judgment for the same as shall be Just.

Mr. At. Gen. May it please your Lordships, I am of Councel in this Cause for the King against this Noble Lord *Edward* Earl of *Warwick* and *Holland*; The Prisoner at the Bar, who stands Indicted by the Grand Jury of the County of *Middlesex*, has been Arraigned, and is now to be Tryed before your Lordships for the Felonious Killing and Murdering of Mr. *Coote*; in the Indictment named, the Evidence to make good this Charge against this Noble Lord, it comes to my turn to open to your Lordships.

Mr. At. Gen. My Lords, the Case as to the Fact, according to my Instructions, is this; Upon *Saturday* the 29th of *October* last, at night, my Lord of *Warwick*, my Lord *Mohun*, Mr. *French*, Mr. *Dockwra*, and Mr. *Coote*, the unfortunate Gentleman who was killed, met together at one *Locket's*, who kept the *Greyhound* Tavern in the *Strand*, and there they stayed till it was very late; About 12 of the Clock at night, or thereabouts, a Messenger was sent by the Company to fetch another Gentleman, Mr. *James*; and Mr. *James* coming to them, in what Condition your Lordships will be told by the Witnesses; About One of the Clock in the Morning, on *Sunday* the 30th of *October*, they all came down out of the Room where they had been so late, to the Bar of the House, and there, as the Witnesses will tell your Lordships, Swords were drawn, and Chairs were called for, and Two Chairs which were nearest at hand came, and Two of the Company went into those Chairs; who they were, and what past at that time, the Witnesses will tell your Lordships; Those that got into those Chairs came out again, and more Chairs were called for. But I must acquaint your Lordships, that my Lord *Mohun*, when the Two Gentlemen that went into the Chairs ordered the Chairmen to take them up, and carry them away, spoke to them to stop and go no further, for there should be no Quarrelling that night, and that he would send for the Guards and secure them; and after this they came out of the Chairs again; It will appear there were Swords drawn amongst all of them, and some Wounds given; More Chairs being called for, and brought, this Noble Lord that is here at the Bar, my Lord of *Warwick*, my Lord *Mohun*, and the other Four Gentlemen, went all into the Chairs, and gave the Chairmen Directions whither they should carry them, at least-

leaſtwiſe the foremoſt had Directions given them, and the reſt were to follow them; it was a very dark night, but at laſt they came all to *Leiceſter* Square, and they were ſet down a little on this ſide the Rails of the Square, and when the Chairmen had ſet them down they went away; but immediately ſome of them heard my Lord of *Warwick* calling for a Chair again, who came towards the Rails, and there they found Two of the Gentlemen that had been carried in ſome of the other Chairs holding up Mr. *Coote* between them, and would have had the Chairmen carried him away to a Chirurgeon's, but they found he was dying, and ſo would not meddle with him; afterwards my Lord of *Warwick* and Mr. *French* were carried by Two of the Chairs to Mr. *Annys*, the Chirurgeon at the *Balneo* in *Long-acre*, where Mr. *French* being wounded, was taken care of, particularly by the Recommendation of my Lord of *Warwick*, and the Maſter of the Houſe was called up, it being very late; Mr. *Coote's* Sword was brought to that place, but by whom it was brought we cannot exactly ſay, while my Lord of *Warwick* and Capt. *French* were there, and my Lord of *Warwick* had given Orders for the Denying of himſelf, and forbid the opening of the Door. There came the other Two Gentlemen, Mr. *James* and Mr. *Dockwra*, and upon their Knocking at the Door they were let in by my Lords Order, after he had diſcovered who they were, looking through the Wicket. Mr. *James* had his Sword drawn, but it was broken. My Lord of *Warwick's* Hand was ſlightly wounded, and his Sword bloody up to the Hilt when he came in, as will be proved by the Teſtimony of the Servants in the Houſe. There was a Diſcourſe between my Lord, Mr. *James*, and Mr. *Dockwra*, about going into the Country, but before they went the Swords were all called for to be brought to them, and upon inquiry there was no Blood found upon Mr. *Frenche's* Sword, but a great deal upon my Lord of *Warwick's*, of which great notice was taken at that time. Mr. *Coote*, who was killed, had received one Wound in the left ſide of his Breaſt, half an Inch wide, and five deep, near the Collar Bone; he had likewiſe another Wound upon the left ſide of his Body; both which your Lordſhips will hear, in the Judgment of the Surgeon, Mortal Wounds, and the Evidence will declare the Nature of them.

My Lords, The Evidence does chiefly conſiſt of, and depend on Circumſtances, the Fact being done in the Night, and none but the Parties concerned being preſent at it, we ſhall lay the Evidence before your Lordſhips as it is for your Judgment, and call what Witneſſes we have on the behalf of the King, againſt this Noble Peer the Priſoner at the Bar, and take up your Lordſhips time no further in opening; and we ſhall begin with *Samuel Cawthorne*; he is a Drawer at the Tavern where thoſe Lords and Gentlemen were together, and he'll give you an account of the time they came there, how long they ſtaid, what happened in the Houſe during their being there, and what time they went away.

L. H. St. Give him his Oath. [*Which the Clerk did.*

Mr. At. Gen. My Lords, I doubt the Witneſs is ſo far off, that it will be difficult for him to hear the Queſtions that we are to ask him, unleſs we could have him nearer to us.

L. H. St. Mr. Attorney, My Lords ſeem to be of Opinion, that it will be more for your advantage and theirs, that the Witneſſes ſtand at the diſtance they do, which will oblige you to raiſe your Voice ſo loud, that they may hear the Witneſſes and you too.

Mr. At. Gen. Is your Name *Samuel Cawthorne*?

Cawthorne. Yes my Lord.

Mr. At. Gen. Where do you live?

Cawthorne. With Mr. *Lockett* at *Charing-Croſs*.

Mr. At. Gen. Did you live with him at the *Greyhound* Tavern in the *Strand* the latter end of *October* laſt?

Cawthorne. Yes I did.

Mr. At. Gen. Well, pray will you acquaint my Lords with the time when my Lord of *Warwick*, my Lord *Mohun* and Mr. *Coote* were at that House, how long they stayed, what happen'd while they were there, and when they went away.

Cawthorne. It was Saturday Night the 29th. of *October* last.

Mr. At. Gen. Pray tell my Lords the whole of your knowledge in the matter.

Cawthorne. There came my Lord of *Warwick*, my Lord *Mohun*, Capt. *Coote*, Capt. *French*, and Capt. *Dockwra* the 29th. of *October* last in the Evening to my Master's House at the *Greyhound* Tavern in the *Strand*.

Mr. At. Gen. How long were they there, and what time of Night came they in?

Cawthorne. About Eight a Clock at Night, my Lord *Warwick*, my Lord *Mohun*, Capt. *French*, and Capt. *Coote*, came in.

Mr. At. Gen. What Day do you say it was?

Cawthorne. Saturday the Nine and twentieth Day of *October* last.

Mr. At. Gen. How long did they continue there?

Cawthorne. It was between One and Two the next Morning before they went away.

Mr. At. Gen. Was any body sent for to come to them there?

Cawthorne. Yes, Mr. *James*.

M. At. Gen. What time was that?

Cawthorne. About Twelve of the Clock.

Mr. At. Gen. Did he stay with them till they went away?

Cawthorne. Yes.

Mr. At. Gen. What did you observe past in the Company while they were there?

Cawthorne. I did not observe any thing of quarrel, nor so much as an angry word amongst them, till they came down to the Barr and were going away; when they came down to the Bar they order'd me to call them Chairs, or Coaches, and there were no Coaches to be had, and so I went for Chairs, and two Chairs came, for the Porter that went to call the Coaches was a great while before he came back, and as I said, I going for Chairs, there came two, but that they said was not enough, so more Chairs were called for, and at length there were more Chairs gotten; in the first three Chairs, my Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote* went away in; and my Lord of *Warwick* and my Lord *Mohun* bid the Chair-men carry them home.

Mr. At. Gen. Were there then any other Chairs at the Door?

Cawthorne. There were two more Chairs at the Door, and another was called for.

Mr. At. Gen. Did you hear any Directions given where they should carry them?

Cawthorne. My Lord *Warwick*, and my Lord *Mohun* bid them carry them home.

Mr. At. Gen. Did you hear my Lord *Warwick* or my Lord *Mohun* particularly, and which say whither they would be carried.

Cawthorne. I did hear my Lord *Mohun* say Captain *Coote* should go and lye with him, or he would go and lye with Capt. *Coote* that Night, for there should be no quarrelling.

M. At. Gen. Did they upon that go away?

Cawthorne. Mr. *French* and Mr. *Coote* were in Chairs before my Lord *Mohun* or my Lord *Warwick*, or any of the rest.

Mr. At. Gen. What then happen'd upon their going into the Chairs?

Cawthorne. My Lord *Mohun* came out to them, and swore there should be no Quarrel that Night, but he would send for the Guards and secure them.

Mr. At. Gen. What happen'd then?

Cawthorne. Upon that, both of them came out of their Chairs and came into the House, and there they came to the Bar, three of them in the passage by the Bar, and three of them behind that passage.

Mr.

M. At. Gen. Pray will you tell what did really pass throughout the whole Transaction, what was done after they came in again into the House.

Cawthorne. After that I was bid to call for Six Chairs, if I could get no Coaches, and so I did, and when I had brought what Chairs I could get, and returned to the Bar, I heard the Swords clash, when the Swords were drawn, I cannot say, nor by whom, it might be, by all the six for ought I know, because I was in the Street to call the Chairs, and when I came back to the House, I was in hopes all had been quieted, for their Swords were putting up; And when they went away in the Chairs, I did hope they went away friendly.

Mr. At. Gen. Pray how did they go away, who went together?

Cawthorne. My Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote* went in the first three Chairs, them three together, and bid the Chair-men go home, the sixth Chair was not then come.

Mr. At. Gen. When that Chair came pray what directions were given to it.

Cawthorne. I did not hear them give the Chair-man any Directions at all.

Mr. At. Gen. Do you know any thing more that was done after this time?

Cawthorne. No my Lord, not after they went away, after I return'd with the Chairs, it was in two Minutes time that they went away.

Mr. At. Gen. My Lords, I suppose he knows no more of the Matter.

L. H. St. Will you then ask him no more Questions, Mr. Attorney?

Mr. At. Gen. No, my Lords, unless this Noble Lord shall ask him any Questions, upon which we shall have occasion to examine him.

L. H. St. My Lord, Has your Lordship any Questions to ask this Witness, for now is your time, the King;s Counsel having done Examining him.

E. of War. I desire to ask him whether I did not bid the Chair-men go home?

L. H. St. If your Lordship please to propose your Question to me, I will require an Answer to it from the Witness, and it will be the better heard by my Lords.

E. of War. My Lord, I desire to know of this Man, whether when I went away in the Chair from his Masters House, I did not bid the Chair-men go home.

L. H. St. Witness, you hear my Lord's Question, What say you to it?

Cawthorne. Yes, my Lord of *Warwick* did bid the Chair-men go home.

E. of Warwick. Mr Lord, I have another Questoin to ask him, Whether he knows of any Quarrel there was between me and Mr. *Coote* at that time, or any other time, because we both used to frequent that House?

Cawthorne. No, my Lords, I never heard any angry words between my Lord *Warwick* and Mr. *Coote* in my life.

Then the Lords towards the upper end of the House complaining that they did not hear his Grace, the Lord High Steward was pleased to repeat the Question thus:

L. H. Steward. When my Lord of *Warwick* bid the Chairmen go home, or at any other time, did you observe that there had been any Quarrel between his Lordship and Mr. *Coote*?

E. of Warw. My Lord, I desire he may be asked, since we both used that House, Whether that night when I went away, or before or after, I had any Quarrel with Mr. *Coote*?

L. H. St. The Question my Lord desires you that are the Witness to answer, is, Whether you did hear any Quarrelling or angry Words to pass between my Lord *Warwick* and Mr. *Coote* that night before or after they came down, or when they went away, or at any other time?

Cawthorne. No, my Lord, I never heard any angry Words pass between them then, nor ever at any time before in all my life, but I always looked upon them to be very good Friends.

E. of War.

E. of Warw. I desire he may be asked, Whether Mr. *Coote* did not come to that House in my Company, and whether he did not frequently come to that House?

Cawthorne. Yes, they used to be there every day almost, and they came that night together in Company.

E. of Warw. I desire he may be asked, Whether I have not been frequently in his Company there?

Cawthorne. Yes, I say, very frequently, every day almost, sometimes twice a day.

L. H. St. Would your Lordship ask him any other Question?

E. of Warw. My Lord, I desire he may be asked this Question, Whether he knows of any particular Kindness between Mr. *Coote* and me?

L. H. St. Do you know of any particular Kindness between my Lord *Warwick* and Mr. *Coote* the Gentleman that was killed?

Cawthorne. Yes, my Lord, there was always a great Kindness between them as I observed it ever was so, and I never heard any angry Words pass between them, but they were very good Friends constantly; I waited upon them generally when they were at my Master's House, which was every day almost.

E. of Warw. I desire to know of this Witness, Whether he does not remember, or can name some particular Kindnesses that passed between Mr. *Coote* and me?

L. H. St. Can you specify any particular Instances of Kindness that passed between my Lord *Warwick* and Mr. *Coote*?

Cawthorne. Yes, my Lord of *Warwick* used generally to pay the Reckoning for Mr. *Coote*, and he did so at this time.

E. of Warw. My Lord, I desire he may be asked, between whom he apprehended the Quarrel to be at this time.

L. H. St. You say, Friend, there were Swords drawn, and a Quarrelling at the Bar; Can you tell between whom the Quarrel was?

Cawthorne. My Lord *Warwick*, my Lord *Mohun*, and Captain *Coote*, were all on one side, and the other three were on the other side.

E. of Warw. Who were the two Persons that it was apprehended the Quarrel was between, I desire he may be asked.

L. H. St. You say, there were three on the one side, and three on the other, pray between whom did you apprehend the Quarrel to be?

Cawthorne. I believe the Quarrel was between Mr. *Coote* and Mr. *French*.

E. of Warw. My Lord, I desire to know of this Witness, what Words he heard Mr. *Coote* say, after he and Mr. *French* returned into the House and came out of the Chairs.

L. H. St. What do you say to the Question my Lord proposes?

Cawthorne. I heard Mr. *Coote* say, He would Laugh when he pleased, and he would Frown when he pleased, God damn him.

E. of Warw. My Lord, I desire to know who he thinks those Words were addressed to.

L. H. St. To whom did Mr. *Coote* speak these words?

Cawthorne. Whether he spoke them particularly to Mr. *French*, or to the other two Gentlemen who were on the other side of the Bar, I cannot directly tell.

E. of Warw. I desire to know of him, Whether Mr. *Coote* was not one of the three that was on the other side of the Bar?

Cawthorne. Yes, my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote*, were of the outside of the Bar.

E. of Warw. Was Captain *Coote* with me in the beginning of the night at that House?

Cawthorne. Yes, he came at the beginning of the night with my Lord of *Warwick*.

E. of

E. of Peterb. My Lords, I desire to ask this Witness one Question?

L. H. St. I think it is proper, my Lords, in Point of Method, to let both Sides have done, before any Questions be asked by any of my Noble Lords.

E. of Peterb. I did apprehend my Lord of *Warwick* had done.

L. H. St. No, my Lord, not as yet; pray, my Lord *Warwick*, what other Questions has your Lordship to ask of this Witness?

E. of Warw. My Lord, I desire he may be asked particularly this Question, Whether he perceived any Quarrel particularly between me and Captain *Coote* when we went out of the House?

L. H. St. You hear the Question, Did you perceive any Quarrel between my Lord *Warwick* and Mr. *Coote* before they went out of the House?

Cawthorne. No, I did not, nor ever saw any Quarrel between them in my life.

E. of Warw. I desire to know who paid the Reckoning that night?

Cawthorne. The Reckoning was called for before I came in to take it; and tho' I think my Lord of *Warwick* paid for Mr. *Coote*, yet I cannot so directly tell, because it was called before I came into the Room to receive it.

L. H. St. My Lord, have you any thing more to ask this Witness?

E. of Warw. No, my Lord, at present that I think of.

L. H. St. My Lord *Peterborough*, your Lordship desired to ask a Question, will you please to propose it now.

E. of Peterb. My Lord, this Witness seems to take notice of two Sides, who were on the one side, and who were on the other, and that Mr. *Coote* and my Lord of *Warwick* were on one side; I desire to know one thing of him, What Reason he had to apprehend that they two were of a side?

L. H. St. Friend, you hear that Noble Lord's Question; you seem to say, they were three and three of a side, What Reason had you to apprehend, that my Lord *Warwick* and Mr. *Coote* were of one side? You must explain to my Lords how you come to make that Judgment, what Reason you had to think so.

Cawthorne. They three, my Lord *Mohun*, my Lord *Warwick*, and Mr. *Coote*, were on the one side of the Bar; and Captain *James*, Captain *French*, and Captain *Dockwra* were on the other side of the Bar.

L. H. St. So you said before; but the Question which my Noble Lord desires to be satisfied in is this, How you come to speak as if there was a Quarrel between three and three? What Reason had you to think, that three were on side, and three on the other?

Cawthorne. Their Swords were all drawn, and they stood three on one side of the Bar, and three on the other.

E. of Rochester. My Lords, I desire to ask this Witness one Question; I think he told your Lordship at first, That he did not perceive any angry Words among them; afterwards he comes to talk of Swords drawn amongst them all, three on the outside, and three on the inside of the Bar; I desire to know what was the occasion of those Swords being drawn on the one side or the other?

Cawthorne. Whatsoever Quarrel there was, was amongst themselves above Stairs, and I know no angry Words that passed between them when they came down to the Bar.

L. H. St. See what you say? How consistent one part of it is with another! You said at first, you did not hear of any angry Words that passed between them, and yet you say, All their Swords were drawn, and three were on the one side and three on the other: And when you were Examined upon the Motion of that Noble Lord, what you meant by three on the one side, and three on the other, you said, My Lord *Mohun*, my Lord *Warwick*, and Mr. *Coote*, were on the one side, Mr. *James*, Mr. *French*, and Mr. *Dockwra*, were on the other side: How could there be two sides, unless there was a Quarrel?

Cawthorne. I ſaid, I did not hear any angry Words paſs between them before they came to the Bar, or while they were above Stairs, but there were three on the one ſide of the Bar, and three on the other.

L. H. St. But you have not given a Satisfactory Anſwer to that Queſtion which the Noble Lord, my Lord *Peterborough*, asked you, What Reaſon you had to apprehend, that the Noble Lord the Priſoner at the Bar and Captain *Coote* were of a ſide?

Cawthorne. My Lord *Mohun* came to the Chair ſide when Captain *Coote* and Captain *French* were got into the two firſt Chairs, and told Captain *Coote*, That there ſhould be no Quarrel that night, but that they three, my Lord *Warwick*, my Lord *Mohun*, and he, ſhould go home together; and I took them three to be of a ſide, becauſe they were on the outſide of the Bar together, and when they all went away, their three Chairs went away firſt all three together.

L. H. St. Is that all the Reaſon you can give why you ſay, They were three and three of a ſide?

Cawthorne. Yes, my Lord, I did apprehend it ſo.

Mr. At. Gen. If my Noble Lords have done with their Queſtions, I deſire to ask this Witneſs another Queſtion; My Lords, I think this Perſon ſays, That there was a Quarrel at the Bar of the Houſe, and Swords drawn, and as he apprehended, three were on the one ſide, and three on the other; but if I take him right, I do not ſee that he has given your Lordſhips any manner of Satisfaction, what Reaſon he had to apprehend there were three and three of a ſide, or, which will be very Material in this Caſe, if your Lordſhips can get to the Knowledge of it, which three were on the one ſide, and which three were on the other, or indeed whether there were three and three of a ſide, as your Lordſhips will have Reaſon by and by to enquire a little further into that Matter: My Lords, I deſire he may be asked this plain Queſtion, What Words or other Paſſages he did perceive, that made him apprehend there was a Quarrel between them, and they were three and three of a ſide?

Cawthorne. I apprehended it from the words that Mr. *Coote* ſaid, That he would Laugh when he pleaſed, and Frown when he pleaſed.

Mr. At. Gen. Pray, my Lord, I deſire he may be asked, Who thoſe Words were ſpoke to, and who they were applied to?

Cawthorne. They were ſpoke to Mr. *James*, Mr. *French*, and Mr. *Dockwra*, who were within ſide of the Bar.

Mr. At. Gen. Did he apply thoſe Words to all thoſe particular Perſons?

Cawthorne. Yes, as I thought, for they Three were within the Bar, my Lord *Warwick*, my Lord *Mohun*, and Mr. *Coote* were without the Bar.

Mr. Att. Gen. Pray my Lord, I deſire he may be asked this Queſtion, Was that before the Swords were drawn, or afterwards?

Cawthorne. It was before.

Mr. Att. Gen. Then I deſire he may be asked, Whether the Swords were drawn upon thoſe Words?

Cawthorne. No, my Lord, the time of drawing the Swords was when I went out to call Chairs and Coaches; and I know not who drew the Swords firſt, or when they were drawn, but when I came back I found them all drawn, and I heard them Claſhing.

Mr. Att. Gen. Upon the Oath you have taken, Was thoſe Words that you ſpeak of Mr. *Coote*'s, That he would Laugh when he pleaſed, and Frown when he pleaſed, before the Swords were drawn, or after the Swords were drawn?

Cawthorne. Before the Swords were drawn; for I did not ſee the Swords drawn till I came back.

L. H. St. Does either ſide deſire to ask this Witneſs any Queſtions; if not, then you may withdraw, and you may proceed, Mr. Attorney, to Examine ſome other Witneſs.

Lord

Lord Wharton. My Lord, there was a Queſtion aſked at the Bar about the hindring of the Quarrel, and my Lord *Mohun*'s deſire to part them, and make them Friends, I deſire the Witneſs before he goes away, may be aſked what he knows of that Matter.

L. H. St. It has been obſerved by my Lord that you ſaid, when they came down to the Bar, and the Quarrel happened, ſome body would have prevented it; pray repeat that Matter again. Did you obſerve any of the Company were diſpoſed to take up the Quarrel, and make them Friends, and who they were?

Cauthorne. My L. *Mohun* and my L. *Warwick* ſaid they would ſend for a File of Muſqueteers, and my Lord *Mohun* did all he could to quiet and pacify them till the Quarrel was over, and my Lord *Mohun* particularly had his Finger prick'd with endeavouring to Croſs their Swords, and keeping them from Fighting, which was all he got by it.

L. H. St. Do you know that of your own Knowledge?

Cauthorne. His Hand was bloody, and he ſaid ſo at the Bar; but I was juſt coming in again when I heard him ſay ſo, but I cannot ſay that I ſaw him hurt, for I was without the Houſe at the time when that was done.

L. Godolphin. My Lords, I deſire to aſk this Witneſs one Queſtion; I obſerve he has told my Lords there was not an angry Word paſs'd between them before they came down to the Bar, I would fain aſk him this Queſtion, Whether he was in the room all the time till they did come down to the Bar.

Cauthorne. I received the Reckoning juſt before they came down to the Bar.

L. Godolphin. And I deſire he may be aſked, How long he ſtaid in the Room when he received the Reckoning.

Cauthorne. It was about two or three Minutes that I ſtaid in the Room, and not longer.

E. of Warw. My Lord this Witneſs that has been Examined, told you, That when we firſt came down to the Bar there were two Chairs called for; and when they came, Mr. *Coote* and the other Gentleman, Mr. *French*, went into the Chairs, and afterwards they came out again, and Mr. *Coote* ſaid ſome Words; I deſire the Witneſs may be aſked again, when it was Mr. *Coote* ſpoke thoſe words, whether it was before or after the time that he came out of the Chair, for I take it to be very material.

Cauthorne. It was after Mr. *Coote* came out of the Chair, for the Chairmen heard the Words, as I verily believe.

Mr. Att. Gen. My Lord, I deſire he may be aſked, Was there any reply made to thoſe words by any of thoſe Perſons he ſays he apprehends were on the other ſide?

Cauthorne. No, not one Word that I know of.

E. of Warw. My Lord, I muſt beg the Favour to have the Queſtion aſked again of him, Whether I did not at that time endeavour to prevent any Quarrelling, and did not ſay I would call for the Guard if they did?

Cauthorne. Yes; My Lord of *Warwick* did ſay ſo, and ſo did my Lord *Mohun*; and ſo I think did Mr. *James*.

L. H. St. How came you not to ſay ſo when you were aſked that Queſtion particularly before? Then you ſaid my Lord *Mohun* endeavoured to prevent the Quarrelling, and make them Friends.

Cauthorne. Yes, my Lord *Warwick* did ſo, and ſo did Mr. *James*.

L. H. St. I cannot tell whether any body elſe deſires to aſk him any Queſtions.

Mr. Att. Gen. My Lord, he ſpeaks of what this Noble Lord my Lord of *Warwick* ſaid; but he does not tell you the particular Expreſſions, nor the time when my Lord ſaid them.

L. H.

L. H. St. You say my Lord, the Prisoner at the Bar endeavoured to pacify the Quarrel between them; but you do not tell my Lords who the Quarrel was between, nor when the Endeavour was made by my Lord *Warwick* to pacify it.

Cawthorne. My Lord of *Warwick* did say he would have the Guards sent for.

L. H. St. What time was that, before or after my Lord *Mohun* said so?

Cawthorne. Truly my Lord, I do not know but that it was at the same time.

L. H. St. Was it when the Swords were drawn, or before?

Cawthorne. They spoke it both before and after the Swords were drawn, as I remember, for the Swords were not drawn while I was in the House, till I came back.

L. H. St. Were the Swords drawn when my Lord *Warwick* spoke of sending for the Guards?

Cawthorne. Surely my Lord it was before the Swords were drawn, when I was sent for the Chairs.

L. H. St. You said there was no angry Words or Quarrel between them.

Cawthorne. Not above Stairs, my Lord; but I apprehended when they came down to the Bar there were three on one side, and three on the other.

Mr. Att. Gen. Pray my Lord, let him be asked this Question, Was it after they were three on the one side, and three on the other that my Lord *Mohun* and my Lord *Warwick* spoke those words?

Cawthorne. I apprehend the words were spoke by Mr. *Coote*, That he would Laugh when he pleased, and Frown when he pleased, was before the Swords were drawn.

L. H. St. But that which my Lords desire to know is, What the time was when my Lord *Warwick* and my Lord *Mohun* declared their desire to part them and make them Friends; whether before or after the Swords drawn.

Cawthorne. Before and after, for I was absent when the Swords were drawn.

E. Rivers. He says, That after my Lord *Mohun* and my Lord *Warwick* threatned to send for the Musqueteers They promised to be quiet; I desire to know who he means by They.

Cawthorne. Mr. *James* called to me and said, I need not go and call for the Guards, for the Quarrel was over. There is one thing more that I forgot, my Lord; After my Lord *Mohun* and my Lord *Warwick* were gone away in their Chairs, and Mr. *Coote*, I heard Mr. *Dockwra* did say to Captain *James* and Captain *French* they did not care a Farthing for them, they would Fight them at any time.

L. H. St. Who were together then?

Cawthorne. Captain *James*, Mr. *French*, and Mr. *Dockwra*, after my Lord *Mohun* and my Lord *Warwick* were gone with Captain *Coote*.

L. H. St. Then Mr. *French* was with them, when Mr. *Dockwra* said so?

Cawthorne. Yes, my Lord.

L. Wharton. If I apprehend him aright as to what he says now, my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote* were gone away at that time.

Cawthorne. Yes, they were gone away in the three first Chairs, which my Lord *Mohun* bid go home.

L. Wharton. Who does he say spoke those words?

L. H. St. You hear my Noble Lord's Question, Who spoke those words? Repeat them again.

Cawthorne. When my Lord *Warwick*, my Lord *Mohun*, and Captain *Coote* were gone, I heard Mr. *Dockwra* say to Mr. *French* and Mr. *James*, we don't care a Farthing for them, we will fight them at any time.

Mr. Att. Gen. I desire to know whether this Witness testified any thing of this Matter when he was Examined before the Coroner?

Cawthorne. No, I forgot those words when I was Examined before the Coroner.

Mr.

Mr. Att. Gen. How ſoon after your Examination did you recollect your ſelf as to what you now ſpeak?

Cawthorne. The next Day after.

Mr. Att. Gen. I pray my Lords that he may be asked, Whether he did in general give the ſame Evidence before the Coroner that he does now?

Cawthorne. Yes, as to all but only thoſe words as to Mr. *Dockwra's* declaring that he did not care a Farthing for them, they would fight them at any time.

Mr. Att. Gen. My Lord, I beg he may be asked how long it was after the Fact was done, that he was Examined before the Coroner.

Cawthorne. It was the next Day in the Afternoon.

Mr. Att. Gen. Then I have this Queſtion further to ask, if your Lordſhips pleaſe, Was he at the Tryal of Mr. *Dockwra*, Mr. *James*, and Mr. *French*?

Cawthorne. Yes, I was.

Mr. Att. Gen. Did he then give any Evidence of thoſe words of Mr. *Dockwra's* after when my Lord *Warwick*, my Lord *Mohun*, and Captain *Coote* were gone?

Cawthorne. No, I did not.

Mr. Att. Gen. My Lord, I have one Queſtion to ask him then more, How he came not to ſwear this Matter at that Tryal.

Cawthorne. It was out of my Mind at that time, and I had like to have forgot it now.

Mr. Att. Gen. My Lord, we have done with this Witneſs: Is it your Lordſhips pleaſure that we go on to call our other Witneſſes?

Lords. Ay, Ay.

Mr. Att. Gen. Then our next Witneſſes, my Lords, will be the Chairmen that Carried my Lord *Mohun*, my Lord of *Warwick*, and Captain *Coote*. We ſhall begin with *Thomas Browne* and *John Gibſon*, one of them carried Mr. *Coote*, the other my Lord of *Warwick*.

[*Thomas Browne* was Sworn.

L. H. Stew. What Queſtion do you ask this Witneſs, Mr. Attorney.

Mr. Att. Gen. That he would acquaint your Lordſhips, whether he carried Mr. *Richard Coote*, the Perſon that was ſlain, upon the 29th or 30th of *October*, from the *Greyhound* Tavern in the *Strand*, and to what Place he carried him?

L. H. Stew. You hear the Queſtion; pray ſpeak ſo loud that my Lords may all hear what you ſay.

Browne. My Lords, I was between the Hours of One and Two in the Morning, on *Sunday* the 30th of *October* laſt, with my Fellow and our Chair, at the *Butler's* Head Tavern at *Charing-Croſs*, and I heard ſome People at *Lockets* at the *Greyhound* in the *Strand*, calling Coach, Coach, a pretty while; but there were no Coaches in the Street, nor that came to them; when they could not get Coaches then they called out for Chairs, and we coming to the Door with our Chair, there were four other Chairs there, and ſix Gentlemen ſtood in the Paſſage, and then it was ſaid, there was not Chairs enough, and there wanted one more, and they ſtood Diſcourſing, and the firſt Man came into my Chair who was Captain *Coote*, and my Lord of *Warwick* he got into another, when the Door of the Chair was ſhut up, we asked them whither we ſhould go, but my Lord *Mohun* came and bid open the Chair again, and we did ſo, and he returned into the Houſe, and there was ſome Diſcourſe between them ſtanding at the Bar in the Entry, Mr. *Coote* came out again and came into my Chair, and my Lord *Mohun* and my Lord of *Warwick* went into two others; Mr. *Coote* bid me carry him into *Leiceſter-Fields*, and to make all the haſte I could; my Lord of *Warwick* and my Lord *Mohun* being in the next Chairs, asked him, *Whether are you a going*, and called out twice, and he ſaid, *To* Leiceſter-Fields; *Pray do not*, ſays my L. of *Warwick*, *but come along with us, and let it alone till to morrow*; but he bid us go on, and as we were turning up *St. Martin's-Lane* by the Croſs-Keys Tavern, my Lord *Mohun*, and my Lord *Warwick* called out to us to ſtop, and their Chairs came up to the back Door of the Croſs-Keys Tavern, and there all the

three Chairs were ſet on a-breſt in *St. Martin's-Lane*, and while they were talking together there came by three Chairs of the other ſide of the way, and Mr. *Coote* bid us take up and make all the haſte we could before them into *Leiceſter-Fields*, ſo taking up the Chair again Mr. *Coote* bid us make haſte, and if we could go no faſter he ſwore Damn him, he would run his Sword in one of our Bodies: There were two Chairs before me, and my L. *Mohun* and my L. *Warwick* followed in two Chairs after me; and when we came to the Corner of *Leiceſter-Fields* at *Green-ſtreet* end, all the three Chairs were ſet down a-breſt again, and Mr. *Coote* put his Hand in his Pocket, and took out half a Guinea to pay and ſaid he had no Silver, and my Lord of *Warwick* ſpoke to my Lord *Mohun*, who took out three Shillings out of his Pocket, who ſaid there was for my Lord *Warwick*, Captain *Coote* and himſelf; and when they were gone out I took my Box and my Pipe, and filled my Pipe, and took the Lanthorn and lighted it, and by that time I had lighted my Pipe I heard a calling out Chair, Chair, again, towards the upper End of the Square, ſo I took my Chair, and there was one of the Chairs that was not gone, and ſo we came up to the upper End of the Fields, and they called to us to bring the Chairs over the Rails; we told them we did not know how to do that, for we ſhould not be able to get them back again; at laſt we did get over the Rails, and made up cloſe to the Place where we heard the Noiſe, for we could ſee nothing, it being a very Dark Night, and when we came up cloſe to them, by our Lanthorn there were two Gentlemen holding up Mr. *Coote* under their Arms, and crying out, *My Dear Coote, my Dear Coote!*

Mr. Att. Gen. Pray who were thoſe two Gentlemen?

Browne. I did not know them, one was in Red Cloaths, and the other had Gold Lace, and they would have had me have taken Mr. *Coote* into my Chair; but ſeeing him bloody, and not able to help himſelf, I ſaid I would not ſpoil my Chair, and ſo would not meddle with him, but they ſaid they would make me any Satisfaction for my Chair, and deſired me to take him in, but he gave himſelf a ſpring from them, and we found he was too heavy for us to lift over the Rails, and all we could do could not make him ſit in the Chair, but the Chair was broken with endeavouring to place him there; and they ſaid, If we would carry him to a Surgeon's, they would give us a Hundred Pound ſecurity; but we finding it impoſſible the Watch was called for, but no body would come near, for they ſaid it was out of their Ward, and ſo they would not come a-nigh me; and I ſtayed about half an Hour with my Chair broken, and afterwards I was laid hold upon, both I and my Partner, and we were kept till next Night Eleven a Clock; and that is all the Satisfaction that I have had for my Chair and every thing.

Mr. Att. Gen. Pray, my Lord, I deſire he may recollect himſelf; for we do apprehend it is very Material who it was that Deſired to take Mr. *Coote* into the Chair.

Browne. I cannot tell who they were, it was ſo very Dark I could only ſee their Cloaths.

Mr. Att. Gen. Did you ſee the Earl of *Warwick* there.

Browne. No, Sir, he was not there, one of them I tell you had Officers Cloaths on, red lined with Blue, and the other had Gold Lace on; there was no body there that held him up but them two.

M. of Norm. He ſays he ſaw two Perſons holding up Mr. *Coote*; it would be very well to have that Matter very well ſettled who thoſe Two Perſons were, I deſire to know how he is ſure my Lord of *Warwick* was not one of them two?

Browne. I know my Lord of *Warwick* very well, and I am ſure he was neither of the Two.

D. of Leeds. I would know what Light he had to diſcern it ſo well by, that he can be ſure my Lord of *Warwick* was not there; for he ſays, it was a very Dark Night, and yet he deſcribes the particular Perſons that held Mr. *Coote* up.

Browne.

Browne. Yes, my Lord, I am ſure my Lord of *Warwick* was none of them.

D. of Leeds. How could you diſtinguiſh in ſo dark a night the Colours of People's Cloaths?

Browne. With the Candle that I had lighted in my Lanthorn.

D. of Leeds. He could not know any of the Perſons unleſs he held a Lanthorn to their Faces, or knew them very well before.

L. H. St. My Lord *Warwick*, will your Lordſhip ask this Witneſs any Queſtions?

E. of Warwick. My Lord; I deſire he may be asked, Whether I did not bid him ſtop at St. *Martins-Lane* end, and do all that I could to hinder Mr. *Coote* from going any further, but to go home?

Browne. The Earl of *Warwick*, and my Lord *Mohun*, as they turned up the Lane, asked Mr. *Coote*, Whither he was going? and when he ſaid to *Leiceſter-fields*, they deſired him to let it alone till to morrow, and my Lord *Mohun* ſaid he ſhould go home with him; but the other bid us go on, and ſaid he would not go to his Lodgings, but, that they would make an end of it that night; Still they called to him again, Dear *Coote* let's ſpeak a Word with you, and as the Chairs came to the Back-Door of the *Croſs-Keys* Tavern, there they ſtood all of a-breaſt, and they both of them ſpoke to him, and ſtood a pretty while there, and in the mean time 3 Chairs paſſed by on the other ſide, he Commanded us to take up, and carry him away to *Leiceſter-fields* immediately, and overtake the other Chairs, or he would run one of us into the Body.

L. H. St. Would your Lordſhip ask him any more Queſtions?

E. of Warwick. No, my Lord.

Mr. At. Gen. My Lord, I obſerve, he ſays they Diſcourſed ſome time together while they ſtopped in St. *Martins-Lane*, I deſire that he may be asked, whether he can tell what that Diſcourſe was?

Browne. I could not well hear, they Whiſpered together, but I could hear my Lord *Mohun*, and my Lord of *Warwick*, deſire Capt. *Coote* to go home, and let the Buſineſs alone till another time.

Mr. At. Gen. I deſire he may Explain himſelf, what that Buſineſs was that they would have put off till to morrow?

Browne. I know not what it was, I heard of no Anger betwixt them, but they were as good Friends for any thing I know to the contrary, as ever they were in their Lives, or as ever I ſee any Men.

L. Jeffreys. He ſays, there were Two went into Chairs at the Door of the Houſe, and afterwards went out again, and went into the Houſe, and there was Diſcourſe at the Bar of the Houſe, I would deſire to know what that was?

Browne. I did not hear the Diſcourſe that was in the Houſe, I was at the Door of the Houſe.

Mr. At. Gen. Our next Witneſs is *William Crippes.* [*Who was Sworn.*

L. H. St. What do you aſk this Man, Mr. Attorney?

Mr. At. Gen. Pray will you give my Lords here an Account, who you carried to *Leiceſter-fields* the 29th or 30th of *October*, and what happened in your knowledge at that time?

Crippes. Capt. *Coote* was the firſt Man that went into the Chair when we came to the *Greyhound* Tavern, afterwards he came out again, and when we took him up the ſecond time he was the firſt Man that ſet out, and he bid us carry him to *Leiceſter-fields*, and when we came to the Corner of St. *Martins-Lane*, we turned up that way; and my Lord of *Warwick*, and my Lord *Mohun*, called to us, being in Chairs behind, to know whither we were going, and deſired to ſpeak with Capt. *Coote*, and he ſaid he was going to *Leiceſter-fields*; and when they asked, what to do? he ſaid, To end the Buſineſs; They deſired him to put it off till to morrow; and while they were Diſcourſing about it in St. *Martins-Lane*, there paſſed by other 3 Chairs, which when Capt. *Coote* ſaw, he bid us take up and overtake them, and go faſter, or he would run one of

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us into the Body; So we went on, and at the lower end of *Leiceſter-fields* we ſet him down, and the other Two Gentlemen, my Lord *Warwick*, and my Lord *Mohun*, were there ſet down, and went Lovingly together, for any thing that I ſaw, up the Pavement of the Square, towards the upper end; and in a little time we heard a Noiſe of Calling for Chairs towards the upper end, and when we came there with the Chair, we were bid to lift over the Chair within the Rails, and when we ſaid it was hard to be done, they inſiſted upon it, and we did come in, and when we came there we ſaw Two Gentlemen holding up Capt. *Coote*, and would have had us taken him into the Chair; We ſaw there was a great deal of Blood, but I never heard how it came, and they would have had us carried him to a *French* Surgeon's, and proffered any Money.

Mr. At. Gen. My Lord, I deſire to know, who they were that deſired him to be carried to the Surgeon?

L. H. St. You hear the Queſtion, What ſay you?

Crippes. I cannot tell, my Lord, one of them had ſomething of Lace upon him, but it was ſo dark that I could hardly ſee my Hand, and therefore I cannot tell who they were; and when there was an Objection made, that the Chairs would be ſpoiled, they ſaid we need not queſtion our Chair, they would give us 100 *l.* Security to anſwer any Damages, if we would but carry him; ſo we endeavoured to put him into the Chair, but could not; and ſo we called out to the Watch, to have had ſome help, but they ſaid it was none of their Ward, and ſo they would not come to us; ſo the Gentlemen went away, and we left them, and went and called a Chirurgeon, who when he came ſaid, he was a Dead Man, and we were ſecured till the next day.

Mr. At. Gen. Pray, my Lord, I deſire he may be asked, Were there not other Chairs in that place at that time?

Crippes. There was one, in the Field beſides, and no more that I could ſee, they all went away but us Two.

Mr. At. Gen. What diſtance of time was there between their ſetting down in *Leiceſter-fields*, and their Calling the Chairs again?

Crippes. Not a quarter of an hour.

Mr. At. Gen. What became of the 3 Chairs that paſſed by you in St. *Martins-Lane*?

Crippes. They got before us, but what became of them afterwards I cannot tell.

Mr. At. Gen. Did they come from the ſame place, the Tavern in the *Strand* that you were at?

Crippes. Yes, I believe they did, my Lord, for Capt. *Coote* bid us follow them, and threatned us if we did not make greater haſte.

Mr. At. Gen. Do you know my Lord of *Warwick*?

Crippes. Yes, he had Whitiſh Cloaths on, and none but he had ſuch Cloaths on as thoſe were.

L. H. S. Will your Lordſhip ask this Witneſs any Queſtions?

E. of Warwick. My Lord, I deſire he may be asked, Whether I did not bid him ſtop? And, Whether I did not ſay, they ſhould not go to Quarrel that night?

Crippes. Yes, both he and my Lord *Mohun* would not have had Captain *Coote* gone any where, but home to his Lodgings.

Mr. At. Gen. My Lord, I deſire to know of him, directly and down-right, Whether my Lord of *Warwick* was not one of them that held him when he was within the Rails in the Fields?

Crippes. No, he was not, he was neither of them, for the one of them was too big for him, and the other was too little for my Lord *Mohun*?

Mr. At. Gen. Now we ſhall Call the Chairman that carried the Earl of *Warwick* into *Leiceſter-fields*, *James Craſtle*. [*He was Sworn.*

Mr. At. Gen. Will you tell my Lords what you know of any Person that you carried the 29th or 30th of *October* last from the *Greyhound* Tavern in the *Strand*, and who it was, and whither you carried him?

Cattle. I was going along *Charing-Cross* between One and two in the morning the 30th of *October* last, and I heard a Chair called for at the *Greyhound*, at the *Door-Tavern*, and thither I and my Partner were, and we took up the Gentleman, and carried him to *Leicester-fields*.

Mr. At. Gen. Who was that Gentleman?

Cattle. It was my Lord of *Warwick*.

Mr. At. Gen. What time of night do you say it was?

Cattle. It was about One or two in the morning.

Mr. At. Gen. What day of the Week was it?

Cattle. It was *Saturday* night and *Sunday* morning.

Mr. At. Gen. Whither did you carry him?

Cattle. Into *Great-street*, towards the lower end of *Leicester Square*.

Mr. At. Gen. What Chairs were there more there?

Cattle. There was one that Capt. *Coot* was in, and another that my Lord *Mohun* was in, and we went away all together.

Mr. At. Gen. Were there no other Chairs?

Cattle. I did not know who went in the other Chairs, but there were 3 other Chairs that passed by us at St. *Martin's-Lane*, and we followed after them to *Leicester-fields*.

Mr. At. Gen. Pray what became of you after you had set down your Fare?

Cattle. We were Discharged and Paid, the other 3 went up towards my Lord of *Leicester's*, but we were coming away, and in a little time we heard the Noise of calling Chairs, Chairs, again, and there were Two Chairs did come up, *Thomas Bramer's* and ours; My Lord of *Warwick* called our Chair, and we took him into it, and he bid us carry him to the *Bagnio* in *Long-acre*, and when we came there we knocked at the Door, and his Hand was bloody, and he asked us if we had any Handkerchief to bind up his Hand.

Mr. At. Gen. Was there any other Chairs at the Door of the *Bagnio*, at the same time when you came there?

Cattle. Yes, there was another Chair there at the Door at the same time, and we set down both together.

Mr. At. Gen. Pray, Whence came that Chair?

Cattle. Indeed I do not know.

Mr. At. Gen. Who were the Chairmen that carried that Chair?

Cattle. Indeed my Lord *Mohun*, and my Lord *Warwick*, were the only Persons that I knew of all the Company.

Mr. At. Gen. What sort of Gentleman was the other that went out of the other Chair into the House?

Cattle. He was a pretty tall Man; when he was in we went away; I only can say I saw my Lord of *Warwick* go into the House.

Mr. At. Gen. Did you take any notice of any Sword that my Lord of *Warwick* had in his Hand at that time?

Cattle. No, I cannot say I did take any notice of any Sword, only that there was a Handkerchief desired.

Mr. At. Gen. Pray, Did you hear no Noise at all in the Field, till you heard Chairs called for again?

Cattle. No, I cannot say I heard any Noise in the Field.

Mr. At. Gen. Did you apprehend there was any Fighting?

Cattle. No, I knew nothing at all of it, but upon the calling of Chairs again, and my Lord *Warwick* coming along, we took him in, and he bid us go to the *Bagnio*, and thither we went.

Mr. At. Gen. My Lord, we have done with this Witneſs.

L. H. St. My Lord *Warwick*, will you ask this Witneſs any Queſtions?

E. of Warwick. No, my Lord.

Mr. At. Gen. Then, my Lord, our next Witneſs is *John Gibſon*, he was another of thoſe Chairmen that carried my Lord of *Warwick* to the *Baggio* afterwards. Pray, Will you give my Lords an Account what you know, who you carried the 29th and 30th of *October* laſt, and whither you carried them?

[*He was Sworn.*

Gibſon. My Lord, I was at *Charing-Croſs* with my Partner the 29th of *October* laſt, at night, and about One or two a Clock in the morning Chairs were called for to the *Greyhound-Tavern* in the *Strand*, and when we came there, my Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coote*, got into the 3 firſt Chairs, and we got my Lord *Warwick* into our Chair, and when we had him there we were bid to go towards *Leiceſter-fields*, as I apprehended, for thither the Chairs that were firſt was to go, and indeed my Lord *Mohun*, and my Lord *Warwick*, did call to ſtop at the end of St. *Martins-Lane*, and asked Mr. *Coote* whither he was going? and he ſaid he was going to make an end of the Buſineſs, and they ſaid it ſhould not be to night, but preſently after 3 other Chairs coming along, and paſſing before us, the Chair that Capt. *Coote* was in was bid to go on, and we were ordered to follow, which was done accordingly; Juſt at the Turning of *Cranſtreet* we ſet down our 3 Chairs, and having had 3 Shillings given us, we were bid to go about our buſineſs; and, I think, juſt about the Turning of *Greenſtreet* and we ſtayed till there came another Chair again, and we and the other Chair upon my Lord *Warwick*'s coming into us, went away from thence, and carried him to the *Baggio* in *Longacre*.

Mr. At. Gen. You talk of another Chair, pray, Whoſe Chair was that?

Gibſon. There was another Chair that was got there juſt before us, but indeed I do not know whoſe it was, nor indeed can I ſay who it was that was in it, but this I am ſure we went to the ſame place, and we met and ſit juſt at the ſame time, and my Lord of *Warwick* asked for a Handkerchief to bind about his Hand, which was bloody, which was given him.

Mr. At. Gen. Did you not know who was in the other Chair at that time?

Gibſon. No, indeed, I did not know, I will aſſure you.

Mr. At. Gen. Pray, Did you not know where that other Chair took the other Gentleman up?

Gibſon. No, indeed Sir, I do not.

Mr. At. Gen. Pray, What time of the Night was it?

Gibſon. It was between One and two of the Clock in the Morning.

Mr. At. Gen. You talk of his Hand being hurt, and that he called for a Handkerchief, Did you ſee his Hand bleed? and, pray, in what nature was his Wound?

Gibſon. My Lord, all I can ſay is, there was Blood, and he wanted a Handkerchief, and had one, for he ſaid his Hand was hurt, but in truth I did not take any notice what that hurt was, I did not ſee it, if my Partner took notice of it, ſo, but elſe I can ſay nothing to it, but the Handkerchief was afterwards asked again, and could not be had.

L. H. St. Would my Lord of *Warwick* ask this Witneſs any Queſtions?

E. of Warwick. No, my Lord.

Mr. At. Gen. Then, my Lord, our next Witneſſes are *Robert Applegate*, and *Peter Catro*, who will give your Lordſhip an Account who they carried at this time.

L. H. St. Whom do you call firſt?

Mr. At. Gen. Robert Applegate. [*Who was Sworn.*

L. H. St. What Queſtions do you ask him, Mr. Attorney?

Mr.

Mr. At. Gen. I desire that he would acquaint your Lordship what he knows of what passed at the *Greyhound Tavern* in the *Strand* the 29th of *October* last, whom he carried, and whither he carried them?

Applegate. My Lord, about One or two a Clock in the morning, a *Sunday* morning, the 29th or 30th of *October* last, I was going home with my Partner and my Chair, and I heard them calling at the *Greyhound* Tavern in the *Strand*, Mr. *Lockett's*, for Coaches and Chairs, there was no Coach to be had that could be heard of, but coming up to the Door they said they wanted 3 Chairs, and when we were there at the Door, there came out first my Lord *Warwick*, Capt. *Coote*, and my Lord *Mohun*, Capt. *Coote* got into the first Chair, and what Directions he gave them I cannot tell; My Lord of *Warwick* got into the next, and into ours, which was the third, my Lord *Mohun* came in, and bid us take him up and carry him towards *Westminster*, and he ordered us to follow the Chairs before; Just as they turned at St. *Martins-Lane*, my Lord *Mohun* called out, and desired to stop, and at the *Craft-Key* Tavern back Door all the 3 Chairs came up together, and then my Lord of *Warwick*, and Capt. *Coote*, and my Lord *Mohun* talked together, and I could hear my Lord *Mohun* and my Lord of *Warwick* desire Capt. *Coote* to defer it, and put it by till another day, what it was, indeed I cannot tell: but while they were talking there, Three Chairs more came up on the other side of the way, and Capt. *Coote* would needs go forward, and my Lord *Mohun* and my Lord of *Warwick* went with him, and so they went all for down at the lower end of *Leicester fields* at *Green-street* end. But in truth I did not see where the other Three Chairs set down those they carried.

Mr. At. Gen. What then hapned afterwards, Can you tell?

Appleby. I cannot tell whether I had lighted my Pipe, or just Lighting it when I heard Chairs called again, upon which we run up with our Chair towards the upper end of the Fields, and there I did see my Lord of *Warwick* within the Rails, who bid us put over our Chair into the Fields, but we told him if we did, we could not get it over again, and so we went with our Chair to the corner of the Fields, and when we came there, there came out Capt. *French*, who bid us open our Chair, and let him in, for he did believe he was a Dead Man; and upon that we did take him in, and he bid us carry him with all the speed we could to the *Bagnio* in *Long-Acre*, and my Lord of *Warwick* got into another Chair behind, so went to *Long-Acre*, and when we came to the Door of the *Bagnio*, and Capt. *French* came out of the Chair, he was so weak that he fell down upon his Knees, and when he came out, I asked who should Pay me, and desired to be Discharged, and the Earl of *Warwick* said, *Damn ye*, Call for your Money to Morrow, so they both went in at the *Bagnio* Door together.

Mr. At. Gen. Pray who called for the Chair first, Capt. *French*, or my Lord of *Warwick* in the Fields.

Applegate. I cannot tell, but when I brought up my Chair, I first saw my Lord of *Warwick*, and he would have had me lifted the Chair over the Rails, and I told him we could not get it over again, and so went up to the upper end of the Fields.

Mr. At. Gen. If you first spoke with my Lord of *Warwick*, Why did you not Carry my Lord of *Warwick*?

Applegate. Indeed I cannot tell, but I suppose it was because he did not come so soon out of the Fields as Capt. *French*, or did not come the same way.

Mr. At. Gen. Pray do you remember any thing that happened just at their carrying Capt. *French* away?

Applegate. Before he went into the Chair he stopped, and would have pulled off his Cloaths, but we would not let him.

Mr. At. Gen. Did you see any Sword Capt. *French* had?

Applegate. I did see no Sword that I can say directly was a Sword, but Capt. *French* had something in his hand, but what it was I cannot tell.

M. At. Gen.

Mr. At. Gen. What was it that he said to you, when he first went into the Chair?

Applegate. He desired to be carried to the *Bagnio*, for he said he believed he was a dead Man.

Mr. At. Gen. Pray, Friend, recollect your self, if you heard him say any thing at all when he first went into the Chair at the *Greyhound* Tavern?

Applegate. I did not hear him mention any thing at all.

Mr. At. Gen. Pray what did you hear my Lord of *Warwick* say at that time?

Applegate. Truly I cannot say I heard him mention any thing at all neither, but I did hear my Lord *Mohun* say, when he could not prevail in St *Martins-Lane* with Capt. *Coote* to go home, that if they did go he would go and see it.

Mr. At. Gen. If They did go, who did he mean by They?

Applegate. My Lord *Warwick* and Capt. *Coote* that were in the other Chairs, there was no body else to speak to.

Mr. At. Gen. Was there any talk of Fighting or Quarrelling?

Applegate. No indeed, I do not know of any difference there was between them.

L. H. St. My Lord *Warwick*, Will your Lordship ask this Witness any Questions?

E. of War. My Lord, I desire he may be asked, Whether I did not endeavour to put off the going into *Leicester Fields*, and to have all things let alone till to Morrow.

Applegate. My Lord, I cannot say any thing of that, but I did hear my Lord *Mohun* beg heartily of Capt. *Coote* to go home, and let the business alone till another time; and, indeed I think I never heard a Man beg more hearty for an Alms at a Door, than he did, that they might not go into the Fields then, but I cannot say that I heard any thing that my Lord of *Warwick* said about it.

L. H. St. Will your Lordship ask him any other Questions?

E. of War. No my Lord.

L. H. St. Had my Lord *Warwick* express any Inclination to go on?

Applegate. Indeed I know not any thing one way nor other.

L. Jefferys. My Lords, if I am not mistaken he did say, that he did not see any thing of Inclination in my Lord of *Warwick* to go on; but I desire if your Lordships please that he may be asked this Question, Whether he did see any thing in my Lord of *Warwick* that shewed any Inclination to the contrary.

Applegate. All that I can say is, I heard my Lord *Mohun* say, Pray let's go home and lie all together, and let us put off this business to another time; but indeed I do not remember that my Lord of *Warwick* said one word of going any way backward or forward.

Mr. At. Gen. Pray, who did my Lord *Mohun* speak these words to?

Applegate. My Lord *Mohun* spoke them to my Lord of *Warwick* and Capt. *Coote* both.

L. H. St. Mr. Attorney, Who is your next Witness?

Mr. At. Gen. Peter Catro. [*Who was Sworn.*

L. H. St. What do you ask him, Sir?

Mr. At. Gen. He was the other Chair-man that carried my Lord *Mohun*, Pray will you give my Lords an account what you know passed at the time when you carried my Lord *Mohun* to *Leicester-fields*?

Catro. I and my Fellow carried my Lord *Mohun* from the *Greyhound* Tavern in the *Strand*, till we came to the turning up of St. *Martins-Lane*, where my Lord *Mohun* desired that our Three Chairs might stop, and that they might go down to *Westminster*, and that my Lord *Warwick* and Capt. *Coote* would go thither, and he would wait upon them to their Lodging; Capt. *Coote* made Answer again something, but what I cannot tell, and his Chair went on, and my

Lord

Lord *Mohun* did ſay, if they went forward he would follow them, and ſee what would come of it.

Mr. At. Gen. What did you ſee happen while you were in St. *Martins Lane*?

Catro. There were other Three Chairs that went by while we ſtood at the *Croſs-Keys* Tavern Door, and Capt. *Coote*'s Chair going forward, we follow'd and went to the end of *Leiceſter-fields* at *Green-ſtreet* end, and there all Three went out of their Chairs and walked up the paved Stones of the Square, my Lord of *Warwick* asked my Lord *Mohun* if he had any Silver, and Three Shillings were given for the Three Chairs, and they went from us, and bid us go about our buſineſs, and in a little while after we heard a noiſe from the upper end of the Fields calling Chairs again.

Mr. At. Gen. Did you obſerve any thing of Quarrel or Difference between them, or any claſhing of Swords.

Catro. Indeed I heard nothing of any Quarrel, for we were at the lower end of the Square, at *Green-ſtreet* end, and when we heard them call for Chairs again, we went up towards the upper end of the Fields, and when we came there we heard one bid us bring up the Chair over the Rails.

M. At. Gen. Who was that?

Catro. Indeed my Lord I cannot tell, for I was behind the Chair, and could not ſee who it was, but we ſaying that we could not get it over again if we did, we went up to the upper end of the Fields, and there was Capt. *French*, I think it was, for I did not perfectly ſee him, being at the hind-part of the Chair, and we went on to the *Bagnio* in *Long-Acre*: and I did ſee my Lord *Warwick* come out of his Chair at the *Bagnio* Door, for there they were ſet down.

Mr. At. Gen. You ſay you ſaw my Lord of *Warwick* at the *Bagnio* Door; Did you ſee any Sword as my Lord of *Warwick* had, or Capt. *French*?

Catro. No, I did not ſee any Sword at all of either of them.

Mr. At. Gen. What do you know of Capt. *French* his declaring he was wounded.

Catro. I think it was either when he went into the Chair, or in *Newport-ſtreet* end he called out to have the Chair opened, for ſays he I think I am a dead Man, and would have pulled off his Cloaths; and when we were at the *Bagnio* Door we tarryed a pretty while till they got them up to let them in, and asking if we ſhould wait, my Lord of *Warwick* bid us come to that Houſe to Morrow Morning for our Money, and they went in together into the Houſe, but I never heard any one word of Quarrel or Diſſatisfaction paſſed between them.

Mr. At. Gen. This Witneſs ſpeaks to the ſame purpoſe as the other did, and I think we need not trouble your Lordſhip any further as to that.

L. H. St. Would my Lord *Warwick* ask him any Queſtions?

E. of War. No, my Lord.

Mr. At. Gen. Then our next Witneſs is one *John Palmer*. [*Who was Sworn.*

Mr. At. Gen. Pray will you give my Lords an Account who it was you did carry in your Chair the 29*th*, or 30*th*. of *October* laſt, and whither you carry'd him?

Palmer. About one a Clock in the Morning, the 30th of *October*, we were called to the *Greyhound* Tavern in the *Strand* to Mr. *Lockett*'s, and there we took up a Gentleman, one Captain *French*.

Mr. At. Gen. Whither did you carry him?

Palmer. He bid us go to *Leiceſter-fields*.

Mr. At. Gen. What did he particularly ſay to you?

Palmer. There were three other Chairs that were juſt gone before from the ſame Door, and he bid us get before all thoſe Chairs, and juſt as we came to St. *Martins-lane* end, we ſaw there were three other Chairs ſet down before us over-againſt the *Croſs-Keys* Tavern Back-Door.

Mr. At. Gen. Well, what did you do then?

Palmer. So we went before according as we were bid unto *Leiceſter-fields*, and at the upper-end of the Fields by *Leiceſter-houſe* we opened the Door, and Captain *French* came out, and he gave us a Shilling, and we went away about our Buſineſs.

Mr. At. Gen. Were there any more Chairs there that went with you?

Palmer. There were two more Chairs that ſet down two other Gentlemen by *Leiceſter-houſe*, and we came away when we were paid; that is all I know.

Mr. At. Gen. Did you ſee any other Chairs beſides your three when you came down again, or any other Gentlemen?

Palmer. We did ſee ſome Gentlemen walking up about the middle of the Square when we came down, but we made what haſt we could away home, it being late, and *Sunday* Morning.

Mr. At. Gen. Did you obſerve any Fighting vvhen you vvere in the Field?

Palmer. I did not hear or diſcern any Fighting vvhile I vvas there.

Mr. At. Gen. Did you hear of any Quarrel, or any thing betvveen any of them and vvhom before?

Palmer. No, I did not knovv of any Quarrel, or hear of any thing at all I do aſſure you.

Mr. At. Gen. All that he ſays then, my Lord, is, That he carried Capt. *French* to the upper end of *Leiceſter-Fields*, and there he left him.

L. H. St. Would my Lord *Warwick* ask this Witneſs any Queſtions?

E. of Warw. I deſire he may be asked, Whether he knows who were in the Chairs that were in St. *Martins-Lane* when they paſſed by?

L. H. St. You hear the Queſtion, What ſay you to it?

Palmer. There were three Chairs, but who they were that were in them I cannot tell directly but as they ſaid when they ſet them down at *Leiceſter-Fields*, they were my Lord *Warwick*, my Lord *Mohun*, and Mr. *Coote*.

Mr. At. Gen. Who was it that ſaid ſo?

Palmer. Some of the other Chairmen when I came by.

L. H. St. Mr. *Attorney*, Who is your next Witneſs?

Mr. At. Gen. We ſhall call next the Chairmen that carried Mr. *Dockwra* and Mr. *James*: Call *Jackſon* the Chairman. [*Who was ſworn.*

Mr. At. Gen. This Man carried Captain *James*: Pray acquaint my Lords, Who you did take up at *Lockett's* in the *Strand* on the 29th or 30th of *October* laſt, and vvhither you carried him?

Jackſon. I carried Captain *James* from *Lockett's* in the *Strand* into *Leiceſter-fields*.

Mr. At. Gen. Hovv many Chairs vvere you that vvent?

Jackſon. There vvere tvvo more that vvent vvhen I vvent, there vvere ſix in all that took up Gentlemen there, and vve vvere the laſt but one.

Mr. At. Gen. Can you tell vvho vvere in the other three firſt Chairs?

Jackſon. I do not knovv vvho vvere in the other Chairs, but I heard my Lord *Mohun* at the Door of the Houſe deſire, That the Buſineſs might be deferred till to morrovv Morning: There vvere ſix Gentlemen at the Door, but truly vvho they all vvere I cannot tell.

Mr. At. Gen. Who did my Lord *Mohun* ſpeak that to?

Jackſon. Indeed I do not knovv vvho he ſpoke it to.

Mr. At. Gen. What Anſvver vvas made to my Lord *Mohun*?

Jackſon. Truly there vvas no Anſvver that I heard, but vve all vvent avvay ſoon after that, and we were bid to go to *Leiceſter-fields* to follow the other Chairs, and when we came to the other end of *Leiceſter-fields*, we ſet down Captain *James* by the *Standard* Tavern, and he gave us a Shilling and bid us go our ways; ſo we went our way, and I heard nothing afterwards but came away down the Fields, and there were three Chairs that ſtood at the bottom of the Fields, and we asked them, What they ſtayed there for? And they ſaid, To fill a Pipe of Tobacco: And preſently after we heard Call Chairs again; but it

was

was late, and it was *Sunday* Morning, and my Partner ſaid, Let us go away home and we did ſo, we went directly home.

Mr. At. Gen. Did you carry no body back?

Jackſon. No, we carried no body back.

Mr. At. Gen. My Lord, we have done with this Witneſs, our next Witneſs is one *Richard Edwards*, and he was one of the Chairmen that carried Mr. *Deckwra*.

[*He was ſworn.*

Mr. At. Gen. Pray will you acquaint my Lords, Whether you carried any body from *Lockett*'s the 29th of *October*, and who it was, and whither you carried him?

Edwards. I do not know who I carried, but they were calling Coaches at the *Greyhound* Tavern in the *Strand*, and no Coaches coming, they called for Chairs, and ſo our Chair was brought up.

Mr. At. Gen. When you came there, who did you ſee there?

Edwards. Indeed I did not know my Lord of *Warwick*, nor my Lord *Mohun*, nor any of them.

Mr. At. Gen. Well, what do you know? Tell my Lords what happened.

Edwards. When we were there, there went Two into two Chairs, and my Lord *Mohun* ſaid, or another Gentleman, I cannot tell which, that the Chairs ſhould not go away, that they would kill any Man that ſhould go away, and they went out of the Chairs, and went into the Houſe again.

Mr. At. Gen. And what happen'd after they went into the Houſe again?

Edwards. After they went out of the Chairs into the Houſe again, as I was told, my Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coote*, went into Three Chairs, and went away from the Door, and there were three Chairs of us that went laſt.

Mr. At. Gen. Whither did you go with your Chair?

Edwards. We went to the *Standard* Tavern at the end of *Leiceſter Fields*, and when we came to the Tavern Door, we asked him if we ſhould knock at the Door, he ſaid no, but he gave us a Shilling and bid us go about our buſineſs, and ſo we did, for we went theer away to *Charing-Croſs*.

Mr. At. Gen. Pray can you tell who were in the other Chairs?

Edwards. Truly I cannot tell any Man that was in our three Chairs, for I was the hind-Chairman, and did not know any of them.

Mr. At. Gen. My Lord, I deſire to know what he means by hin'd-Chairman!

Edwards My Lord, Ours was the laſt Chair that went to *Leiceſter Fields*, and I was behind the Chair, and never could ſee any of them, it being ſo very dark after they took the Chairs, till we came to *Charing-Croſs*, at *St. Martins-Lane*, and then I could not ſee who the particular Perſons were that were in the Chairs; nor indeed, whoſe the Chairs were that carried them.

Mr. At. Gen. What Hour was it?

Edwards It was very late, between One and Two in the Morning, it was paſt One before we were called out.

Mr. At. Gen. You ſay you went to the upper end of *Leiceſter-fields*, with Two other Chairs; Pray did you ſee any other Chairs afterwards, and where?

Edwards. We ſaw three Chairs at the lower end of the Square, as we came down by *Green-ſtreet* end, and we asked them, What they ſtay'd there for, and they ſaid, to light a Pipe of Tobacco.

M. At. Gen. Pray, Who had been carried in thoſe Chairs, Can you tell?

Edwards.

Edwards. I did not ſee them ſet down any Body, and I cannot tell who they carried; and as for the Perſon that we carried, I did not ſo much as ſee him to know him, nor know who he was, but we went away as ſoon as ever we were paid.

Mr. At. Gen. I have one Queſtion more to ask you; You ſay, That my Lord of *Warwick* at the Tavern Door bid you ſtay, and that none ſhould go away, and Swore he would run any Man through that ſhould go away.

Edwards. It was my Lord *Mohun*; and then Two that had gone into the Chairs went into the Houſe again.

Mr. At. Gen. Did not you ſay, that there was ſome talk of going to *Weſtminſter*?

Edwards. My Lord *Mohun* did talk of going to *Weſtminſter* when they went into the Chairs the Second time, and I think I heard Mr. *Coote* ſay he would make an end of it then; and he would kill any Man that would not go forwards to *Leiceſter-Fields*.

L. H. St. My Lord *Warwick*, will you ask this Witneſs any Queſtions?

E. of Warw. No, my Lord.

L. H. St. Mr. Attorney, have you any more Evidence to call?

Mr. At. Gen. My Lord, the next piece of Evidence that we ſhall apply our ſelves to, will be to what happened at the *Bagnio* in *Long-Acre*, after my Lord *Warwick* and Captain *French* came there: And the Witneſs that we ſhall call is *Pomfret*, and he is a Servant at the *Bagnio* in *Long-Acre*, and he will acquaint your Lordſhips who came thither the 30th of *October* laſt, and what happened there.

L. H. St. What is his Name?

Mr. At. Gen. *Henry Pomfret.*

L. H. St. Is he Sworn?

Mr. At. Gen. Yes, my Lord.

L. H. St. What is it that you Examine him about? What Queſtions do you ask him Mr. Attorney?

Mr. At. Gen. Who came to his Maſter's Houſe; and at what time they came.

Pomfret. My Lord, on *Sunday* the 30th of *October* laſt, between Two and Three in the Morning, there came to my Maſter's Door the Earl of *Warwick*, and knocked at the Door, and there was Captain *French* with him; and when they were let in, my Lord of *Warwick* told me that Capt. *French* was wounded, and he himſelf had a Wound, and he deſired that my Maſter might be called up for to Dreſs the Wounds; eſpecially, becauſe Captain *French* was very much wounded, which accordingly was done in about a quarter of an Hour after they were brought in.

Mr. Att. Gen. Did he deſire to be Concealed when he was come in?

L. H. St. Of whom do you ſpeak, Mr. Attorney.

Mr. Att. Gen. My Lord of *Warwick*.

Pomfret. He did deſire, that if any Body asked for him, it ſhould be ſaid he was not there.

Mr. Att. Gen. Pray, in what Condition did my Lord of *Warwick* ſeem to be in at that time.

Pomfret. He ſeemed to be very much concerned at that time, and his Right Hand, in which he had his Sword, and which was drawn, was very much bloody.

Mr. Att. Gen. Was the Sword bloody that he had in his Hand?

Pomfret. The Blade was bloody; but whether it was all over bloody I cannot tell; there was beſides ſome blood upon the Shell, it was very near all over bloody, as I remember.

Mr. Att. Gen. Pray, Friend, Conſider what you Swore at the Coroner's Inqueſt about the Blood upon the Sword.

Pomfret.

Pomfret. Indeed I cannot say it was bloody all along the Blade; but there was blood upon the Shell, and there was blood upon the Inside, it was so to the best of my remembrance.

Mr. At. Gen. What Condition was Mr. *French*'s Sword in.

Pomfret. He had a Drawn Sword in his Hand, but I did not perceive it had any Blood upon it: it was a large blade.

Mr. At. Gen. How do you know what sort of Sword Mr. *French*'s was, and in what Condition it was?

Pomfret. He desired me to take Notice of it next Morning, and I did so, and there was no Blood upon it.

Mr. At. Gen. How came you to be desired to take Notice of what passed there about the Swords?

Pomfret. My Lord, there was three of them the next Day, and one it was said was Mr. *Coote*'s, and another of them was my Lord of *Warwick*'s, which I do believe was bloody from the Point upwards, very near, but I cannot direly say but that was afterwards.

Mr. At. Gen. Who brought in that Sword that you say was Mr. *Coote*'s?

Pomfret. To the best of my Remembrance Captain *Dockwra* brought it in, it was almost half an Hour after my Lord *Warwick* and Captain *French* came into the House, when they came thither.

Mr. At. Gen. They. Who do you mean?

Pomfret. Captain *James* and he.

Mr. At. Gen. Were they let in presently?

Pomfret. No. My Lord of *Warwick* had desired that they might be private there; but when they knocked at the Door, my Lord of *Warwick* desired to know who they were; and when it was understood that they were Mr. *James* and Mr. *Dockwra*, they were let in by my Lord's Order.

Mr. At. Gen. Pray, which of all the Four brought in any Sword in a Scabbard?

Pomfret. It was Captain *Dockwra*.

Mr. At. Gen. Pray, did they appear to be all of a Party?

Pomfret. They were glad to see one another, and they talked a pretty while together, but indeed I cannot say I heard what they talked.

Mr. At. Gen. Pray, do you remember my Lord of *Warwick*'s Sword, and what there was upon it?

Pomfret. It was a Steel Sword Water-Guilt, and as near as I can remember there was Blood upon it for the most part from the Point upward.

Mr. At. Gen. And what did appear upon Mr. *French*'s Sword?

Pomfret. There was Water and Dirt, but there was no Blood at all.

Mr. At. Gen. How long did they stay there?

Pomfret. They all continued about half an Hour, and then went away, all but Mr. *French*, who staid there.

Mr. At. Gen. What then became of the others?

Pomfret. Mr. *James*, and Mr. *Dockwra*, and my Lord of *Warwick*, went away, and my Lord of *Warwick* desired particularly, that we would all take care of Mr. *French*, for he was his particular Friend, and Mr. *French* continued there till *Sunday* about One of the Clock.

Mr. At. Gen. Was there any Discourse at that time about Mr. *Coote*?

Pomfret. Not that I heard of, one Word.

Mr. Att. Gen. Was there any notice taken of any Quarrel that happened between any Body, and who?

Pomfret. No, indeed, I did not hear them take notice of any Quarrel at all between any Body.

Mr. At. Gen. You say Mr. *French* when he came into your House was wounded, and there was Care particularly taken of him because he was wounded.

Pomfret. Yes, my Lord of *Warwick* desired to take Care of him.

Mr. At. Gen. Then pray, was there no Diſcourſe how he came to be wounded?

Pomfret. Indeed I do not know how he came to be wounded; nor did I hear one word of Diſcourſe about it, indeed I cannot ſay any thing who wounded him.

Mr. At. Gen. Pray will you recollect your ſelf, and tell my Lords what ſort of Handle had my Lord of *Warwick*'s Sword when you ſaw it.

Pomfret. It had a Steel handle.

Mr. At. Gen. Pray, can you tell whether the Shell was open or cloſe?

Pomfret. I cannot tell juſtly; I ſaw it, and that was all.

Mr. At. Gen. If I apprehend you, you ſay my Lord had a Wound in his Hand.

Pomfret. Yes, my Lord, he had ſo.

Mr. At. Gen. Pray, in what Hand was it that he was wounded?

Pomfret. To the beſt of my remembrance it was in his Right Hand.

Mr. At. Gen. Pray did there appear much blood there?

Pomfret. Yes, my Lord, indeed there did.

Mr. Serj. Wright. You talk of Mr. *James* and Mr. *Dockwra*'s Swords, pray in what Condition were they?

Pomfret. Mr. *Dockwra*'s Sword by his ſide, and not drawn.

Mr. Serj. Wright. What did you obſerve of Captain *James*'s Sword?

Pomfret. His Sword was Naked, and he had loſt his Scabbard; but how that came I cannot tell, and there was Dirt on one ſide of the Sword, and he ſaid he had left his Scabbard behind him.

Mr. At. Gen. Was there any Blood upon his Sword?

Pomfret. No, there was no Blood that I did ſee upon it.

Mr. At. Gen. Pray, did you ſee any Blood upon Mr. *Dockwra*'s Sword?

Pomfret. No, indeed, I did not ſee Mr. *Dockwra*'s Sword, it was in the Scabbard by his ſide.

D. of Leeds. My Lords, There has been notice here taken of ſeveral Swords that this Witneſs ſaw, and he takes ſo far notice of my Lord of *Warwick*'s Sword, that he tells you what ſort of Hilt it had, and how it was bloody from the Point to the Hilt; I deſire he would give you an account of the Length and Breadth of the other Men's Swords, Mr. *French*, Mr. *James*, and Mr. *Dockwra*.

L. H. St. You ſaid juſt now, that you took notice of my Lord of *Warwick*'s Sword, that it was bloody from the Point to the Hilt, what ſort of Sword was it?

Pomfret. It was a pretty broad Sword.

L. H. St. Did you take notice of the other Swords, what Breadth or Length they were of?

Pomfret. No, my Lord, I did not.

Mr. At. Gen. Which was that Sword that was Dirty as you ſay?

Pomfret. That was Captain *French*'s.

Mr. At. Gen. Was that a broad Sword or not?

Pomfret. No, it was not.

Mr. At. Gen. Pray was it over Night or next Morning that you ſaw the Swords?

Pomfret. It was in the Morning about Three a Clock.

Mr. At. Gen. What time did my Lord of *Warwick*, and Mr. *James*, and Mr. *Dockwra* go away?

Pomfret. My Lord of *Warwick* and they were gone ſeveral hours before Mr. *French*; and to the beſt of my Remembrance Mr. *James* broke his Sword upon the Floor after he came in.

Mr. At. Gen. Pray, what Swords were there in all that you ſaw there?

Pomfret. There was Captain *French*'s, Captain *James*'s, my Lord of *Warwick*'s, and one Mr. *Coote*'s, as Mr. *French* ſaid when it was brought in.

L. H. St. Have you done with this Witneſs, Mr. Attorney?

Mr. At. Gen. Yes, my Lord, we have.

L. H. St. My Lord *Warwick*, Will you ask him any Queſtions?

E. of Warwick. No, my Lord.

L. H. St. Then, Mr. Attorney, call your next Witneſs.

Mr. At. Gen. Our next Witneſs is *Thomas Goodall*, who is a Servant at the *Bagnio* in *Longacre*, as well as this Man that was laſt. [*He was Sworn.*

L. H. St. What Queſtions do you ask him, Mr. Attorney?

Mr. At. Gen. My Lord, I deſire he would acquaint your Lordſhips, What time it was my Lord of *Warwick*, and Capt. *French*, came to his Maſter's Houſe?

Goodall. It was between One and two of the Clock in the morning.

Mr. At. Gen. My Lord, I deſire he would acquaint your Lordſhips what he ſaw and knows, that paſſed at that time?

Goodall. All that I can ſay is, That I did ſee my Lord *Warwick*'s Sword bloody, and it was naked in his Hand, and I did ſee a Wound on his Hand; Indeed I did not ſee him when he firſt came in, for he had been there a pretty while before I ſavv him.

Mr. At. Gen. Pray, in vvhat Condition vvas my Lord vvhen you ſavv him?

Goodall. He had his Svvord in one Hand, and it vvas bloody at the Blade, and at the Hilt, but vvhether it vvas bloody all over indeed I did not take notice of it, and ſo cannot give an account.

Mr. At. Gen. Pray, What ſort of Svvord vvas it?

Goodall. Indeed I cannot give an account what ſort of Sword it was, but it was either Steel or Silver Gilt, as I remember, but I did take notice that there was Blood upon the Hilt, that is, upon the Shell.

Mr. At. Gen. Was it an open Shell, or a cloſe one?

Goodall. I think it was a Cloſe one.

Mr. At. Gen. Pray, Did my Lord of *Warwick* give any Order to be denied in the Houſe, or for any Concealment there?

Goodall. Indeed I did not hear of any Orders given for Concealing of any body there, but my Lord walked up and down very much Concerned.

Mr. At. Gen. Did not Mr. *French* come in with him?

Goodall. I do believe he might, but I cannot ſay I ſaw him when he came in.

Mr. At. Gen. Can you tell when Mr. *James* and Mr. *Dockwra* came in, how long was that after my Lord of *Warwick* was there, and Mr. *French*?

Goodall. To the beſt of my remembrance and knowledge, it was half an hour after my Lord of *Warwick* and Mr. *French* came, that Mr. *James* and Mr. *Dockwra* came, I am ſure it was ſo before I ſaw them in the Houſe, but indeed I cannot ſay directly when they came in, or when they went out.

Mr. At. Gen. Pray, Which Hand of my Lord of *Warwick* was it that was hurt, the Right or the Left?

Goodall. Indeed I cannot poſitively ſay, but I think it was the Right Hand.

Mr. At. Gen. You talk of my Lord of *Warwick*'s Sword, Did you take any notice of Mr. *French*'s Sword?

Goodall. No, indeed, I was buſie about the Affairs of the Houſe, I did ſee my Lord of *Warwick*'s Sword, but that was by chance, and it was bloody at the Hilt, and upon the Blade, but whether it were all over bloody, indeed I cannot tell.

Mr. At. Gen. I deſire to ask him, Whether he can tell who brought in Mr. *Coote*'s Sword thither?

Goodall. Indeed I cannot.

L. H. St. Mr. Attorney General, have you any more Queſtions to ask him?

Mr. At. Gen. No, my Lord, not I.

L. H. St. My Lord *Warwick*, Will you ask him any Queſtions?

E. of Warwick. No, my Lord.

L. H. St. Mr. Attorney, Who is your next Witneſs?

Mr. At. Gen. My Lord, our next Witneſs is Mrs. *A. Goodall*, this Man's Wife. [*She was Sworn.*

L. H. St. What Queſtions do you ask this Gentlewoman?

Mr. At. Gen. I deſire that ſhe would acquaint your Lordſhips, Whether ſhe was at the *Bagnio* in *Longacre* when my Lord of *Warwick* and Capt. *French* came in?

A. Goodall. I was there when my Lord of *Warwick* came in.

Mr. At. Gen. Was Capt. *French* with him?

A. Goodall. Yes, Capt. *French* was with him.

Mr. At. Gen. About what a Clock was it that they came there?

A. Goodall. It was about Two a Clock as near as I can remember.

Mr. At. Gen. In what Condition were they when they came in, pray?

A. Goodall. Mr. *French* was very much wounded.

Mr. At. Gen. Pray, How was my Lord of *Warwick*?

A. Goodall. My Lord had his Sword in his Hand, and it was very bloody, both at the Hilt, and upon the Blade.

Mr. At. Gen. Did you obſerve any Wound that my Lord had?

A. Goodall. I think, to the beſt of my remembrance, my Lord had his Hand wrapped up in a Handkerchief, which was bloody, but I was buſie up and down in the Houſe, and I cannot ſo well tell what Hand it was, I was indeed up and down there while they were there.

Mr. At. Gen. Do you know of any Orders that were given by my Lord of *Warwick* to be Concealed while he was there?

A. Goodall. He did deſire the Door might not be opened to any body that asked for him, and that it might not be ſaid that he was there; and when the other Two Gentlemen came to the Door, he went to the Door himſelf, and when he ſaw who they were, he ordered them to be let in.

Mr. At. Gen. What was the Occaſion of his going to the Door himſelf?

A. Goodall. There was a Knocking at the Door, and he had a mind to know who it was, and when it did appear it was Mr. *James* and Mr. *Dockwra*, he himſelf ordered them to be let in.

Mr. At. Gen. How came the Door to be open to them?

A. Goodall. Indeed I think he opened it himſelf.

Mr. At. Gen. How long was that after he and Capt. *French* came in?

A. Goodall. It was about half an hour.

Mr. At. Gen. When they firſt came in, What poſture were they in, had they any Swords in their Hands?

A. Goodall. I did not poſitively take notice, whether they had any Swords in their Hands, nor what they had when they came in.

Mr. At. Gen. What became of them afterwards?

A. Goodall. My Lord *Warwick*, Mr. *James*, and Mr. *Dockwra*, went away within a little while, and my Lord of *Warwick* ordered particular Care to be taken of Mr. *French*, as his Friend, and he was put to Bed after his Wounds were Dreſſed; but I cannot tell what afterwards became of my Lord *Warwick*, and the other Gentlemen.

Mr. At. Gen. I think you were ſaying, that my Lord of *Warwick* was wounded in the Hand, Which Hand was it?

A. Goodall. I cannot poſitively ſay whether it was the Right or the Left.

L. H. St. Will you who are of the King's Councel ask this Witneſs any further Queſtions?

Mr. At. Gen. No, my Lord, we ſhall ask her no other Queſtions.

E. of Warwick. No, my Lord, nor I.

Mr. At. Gen. Then our next Witneſs is *Henry Amy*, who is a Surgeon, and lives at the *Bagnio* in *Longacre*, and he will give your Lordſhip an Account what paſſed within his Knowledge at this time within his Houſe, and who came thither Wounded, and what particular Care was ordered to be taken of Mr. *French*, and by whom. [*Mr.* Amy *was Sworn.*

Mr.

Mr. At. Gen. I desire you will give an Account to my Lords what happened at your House early in the morning the 30th of *October* last?

Amy. The 30th of *October* last, about Two of the Clock, I was knock't up out of my Bed to Attend two Gentlemen, my Lord *Warwick* and Capt. *French*, who came then into my House.

Mr. At. Gen. In what Condition were they?

Amy. They were both Wounded, Mr. *French* very much, and my Lord of *Warwick* in his Hand.

Mr. At. Gen. Did you see any Swords?

Amy. Yes, they had both Swords in their Hands, and my Lord of *Warwick*'s Sword was very bloody.

Mr. At. Gen. Well, Sir, when they came into your House, What Directions was given by my Lord *Warwick*?

Amy. He gave Directions, if any body should ask for him, they should say he was not there.

Mr. At. Gen. Did any body come and ask for him?

Amy. While we were taking Care of Mr. *French*, and Dressing his Wound, there were some Persons came and knocked at the Door, and my Lord of *Warwick* did Order, that no body should be let in; but he himself went to the Door, and when he found that it was Mr. *Dockwra* and Mr. *James*, my Lord *Warwick* ordered, that they should be let in.

Mr. At. Gen. Pray, Tell my Lords what followed after that?

Amy. After we had Dressed Mr. *French* ———

Mr. At. Gen. By the way, Was there any particular Directions, and by whom, to take Care of Mr. *French*?

Amy. Yes, my Lord *Warwick* desired me to take Care of him, as his Particular Friend.

Mr. At. Gen. Well then, after you had Dressed Mr. *French*'s Wound, what happened?

Amy. I Dressed my Lord *Warwick*'s Wound.

Mr. At. Gen. Pray, Whereabouts was my Lord of *Warwick*'s Wound?

Amy. It was near the first Joynt of his Fore-finger.

Mr. At. Gen. Pray, How long did they stay there?

Amy. After Mr. *Dockwra* and Mr. *James* came in, and my Lord's Hand was Dressed, they stayed a little while, and they Three went away?

Mr. At. Gen. What was said when they went away?

Amy. My Lord of *Warwick* desired to have great Care taken of Mr. *French*; and they said, Now let us go away, and they went away.

Mr. At. Gen. Pray, What time did they stay in your House?

Amy. When they went away, I think it was about half an hour after they first came in.

Mr. At. Gen. Did you take notice of no Sword but my Lord of *Warwick*'s?

Amy. No, not then.

Mr. At. Gen. Did you afterwards?

Amy. Afterwards, in the morning, Mr. *French* called for his Sword, and I looked upon it.

Mr. At. Gen. Pray, in what Condition was his Sword, was it bloody?

Amy. It was without Blood, only a little Dirty.

Mr. At. Gen. Pray, Did you observe that they talked of any Quarrel that had been between Capt. *French* and my Lord, when they came in?

Amy. No.

Mr. At. Gen. Did you ask them any Questions about it, the one or the other of them?

Amy. No, I did not.

Mr. At. Gen. Did you hear them say how they came by their Wounds?

Amy. No, I did not.

Mr. At. Gen. Did you hear them talk of any body being killed, particularly Mr. *Coote*?

Amy. I did not know of any body being killed till next day.

Mr. At. Gen. Did you take any notice of *James*'s and *Dockwra*'s Swords?

Amy. Truly I took no notice of any Swords, but my Lord *Warwick*'s; while my Lord *Warwick* was there in the House, but the next Morning Mr. *French* gave me his Sword, and there was another Sword there, which Mr. *French* told me was Capt. *Coote*'s Sword.

Mr. At. Gen. When was that, How long after my Lord of *Warwick*, and *James*, and *Dockwra* were gone away.

Amy. It was some Hours after.

Mr. At. Gen. When did you hear of Mr. *Coote*'s being killed?

Amy. About Nine a Clock next Morning I heard of Mr. *Coote*'s being killed.

Mr. At. Gen. Whom did you hear it from?

Amy. From *Pomfret* my Servant.

Mr. At. Gen. Did you hear no Discourse between my Lord of *Warwick*, Capt. *French*, Mr. *Lewis*, and Mr. *Dockwra* about it?

Amy. No, I did not.

Mr. At. Gen. Did they not talk how those Wounds came they had, nor did not you ask who gave them?

Amy. No, I did ask no question of either of them; and in Half an Hour after they came in, my Lord of *Warwick*, and the other Two Gentlemen went away.

Mr. At. Gen. When they left *French* there, What Orders were left about him?

Amy. Only to take care of him, my Lord of *Warwick* desired that.

Mr. At. Gen. What Reason did my Lord give for that?

Amy. I heard nothing of Reason, only that he was his particular Friend.

Mr. At. Gen. Did you hear them talk any thing whither they would go, when they went away?

Amy. I did hear some talk about going into the Country.

Mr. Att. Gen. Who was it that said that?

Amy. My Lord of *Warwick*, when they were going away said, Let us go into the Country.

Mr. Att. Gen. Do you know whither they went, when they went away from your House?

Amy. No, indeed I did not.

Mr. At. Gen. My Lord, we have done with him.

L. H. St. Mr. Lord *Warwick*, Will your Lordship ask this Witness any Questions?

E. of War. I desire to have him asked whether I was not wounded in the Hand.

Amy. His Hand was very bloody, the Handkerchief that was about it was wet with the Blood.

E. of War. I desire to ask him when it was that he saw Capt. *French*'s Sword?

Amy. It was not before the Morning, it was about Nine a Clock as I remember.

M. of Norm. Before this Witness goes away, I desire he may be asked one Question, whether he can tell the size of Mr. *French*'s Sword.

L. H. St. Here is a Noble Lord that desires to know if you can tell about Capt. *French*'s Sword, what sort of Sword it was.

Amy. As to the Blade, it was a middle siz'd Sword.

M. of Norm. Was it a broad Blade or no?

Amy. No, my Lord, it was not a broad Blade.

L. H. St. Mr. Attorney, Who is your next Witness?

Mr. At. Gen. Capt. *Loftus Duckingfield.*

[*Who was Sworn.*

Mr. At. Gen.

Mr. At. Gen. This Gentleman will acquaint your Lordships what Discourse past between these Gentlemen the next Day; pray Sir, acquaint my Lords what you heard about Mr. *Coote*'s Death, and when, and where.

Capt. Duckingfield. Early in the Morning I was told of this Accident.

Mr. At. Gen. By whom?

Capt. Duck. One of the Company, I cannot tell who, I think they were all together then, my Lord of *Warwick*, Capt. *James*, Capt. *Dockwra*, and no body else.

Mr. At. Gen. What was their Discourse?

Capt. Duck. They said they believed Capt. *Coote* was killed.

Mr. At. Gen. Did they tell you by whom?

Capt. Duck. By Mr. *French*, every body did say he was his Adversary.

Mr. At. Gen. What Account was given of the Action?

Capt. Duck. They said it was done in the dark, and Capt. *French* was his Adversary.

Mr. At. Gen. Was there any notice taken of any Duel?

Cap. Duck. Yes there were, between these Two, and the other Persons on both sides; and it was said my Lord of *Warwick* was Friend to Mr. *Coote* and my Lord *Mohun*.

Mr. At. Gen. Who were on the other side?

Capt. Duck. Mr. *Dockwra* and Mr. *James*.

Mr. At. Gen. Were there any Discourse who actually fought?

Capt. Duck. It was said, that Capt. *French* fought with Capt. *Coote*, as they believed, and Mr. *James* with my Lord of *Warwick*.

M. At. Gen. Did you see my Lord of *Warwick*'s Sword?

Capt. Duck. Some time of the Day I did, but I cannot tell whether it was in the Morning or no.

Mr. At. Gen. In what condition was it, Was it bloody, or not?

Capt. Duck. It was a such sword.

Mr. At. Gen. How long did they stay with you?

Capt. Duck. About half an hour.

Mr. At. Gen. Did they come publickly?

Capt. Duck. We went away in a Hackney Coach together.

Mr. At. Gen. Pray what Discourse were there about consulting to go into the Country together?

Capt. Duck. That might be Discoursed, but by whom I cannot tell.

Mr. At. Gen. Did my Lord of *Warwick* talk of going into the Countrey?

Capt. Duck. Whether the Company talked of it, or my Lord of *Warwick* in particular, and the rest assented to it, I cannot well tell.

Mr. At. Gen. Whither did they go?

Capt. Duck. I cannot directly tell.

Mr. At. Gen. What time of the Day was it?

Capt. Duck. It was about Six of the Clock.

Mr. At. Gen. Cannot you tell whither they went?

Capt. Duck. Capt. *James* and Capt. *Dockwra* went to the *Star and Garter* in *Cornhill* about Five a Clock or Six, as near as I can remember.

Mr. At. Gen. Can you tell what time my Lord of *Warwick* went away?

Capt. Duck. No, I cannot tell what time he went away, not directly.

Mr. At. Gen. Can you tell of any Agreement amongst them, whither they were to go?

Capt. Duck. No, I cannot.

Mr. At. Gen. What Discourse or Concern did you observe past between them concerning Capt. *Coote*?

Capt. Duck. My Lord of *Warwick* shewed a great deal of Concern for his Friend Mr. *Coote*.

M. At. Gen. Had you any notice of Mr. *Coote*'s Death amongst you?

Capt. Duck.

Capt. Duck. We had notice before we went away, but I cannot tell whether it was before my Lord of *Warwick* was gone.

Mr. At. Gen. Was it after the Diſcourſe of going into the Country, or before?

Capt. Duck. Indeed I cannot directly ſay when it was.

M. At. Gen. Pray what reaſon was there for their going into the Country before he was dead?

Capt. Duck. They believed he was dead.

Mr. At. Gen. Cannot you tell the reaſon why they would go into the Country?

Capt. Duck. No indeed, I cannot tell the reaſon.

Mr. At. Gen. Did you obſerve my Lord of *Warwick*'s Sword? Was there any Blood upon it?

Capt. Duck. I cannot ſay his Sword was bloody at the point; the whole Blade and Shell was bloody, to the beſt of my remembrance.

Mr. At. Gen. What ſort of Sword was it?

Capt. Duck. It was a pretty broad Blade, a hollow Blade, and a hollow open Shell.

Mr. At. Gen. Was there any Diſcourſe concerning Capt. *French*?

Capt. Duck. Yes, they thought he was very ill wounded.

Mr. At. Gen. Was there any, and what Diſcourſe who ſhould give my Lord of *Warwick* his Wound?

Capt. Duck. It was ſaid, they believed Capt. *James* gave my Lord his wound.

Mr. At. Gen. Pray was there any Blood upon Mr. *James*'s Sword, or was he wounded?

Capt. Duck. I ſaw no wound upon Capt. *James*, that I know of.

L. H. St. Do you believe that my Lord *Warwick*'s Sword was bloodied with the hurt of his own Hand, or any otherwiſe?

Capt. Duck. I cannot tell, it was a Cut Shell, and the outſide bloody as well as the in.

L. H. St. My Lord *Warwick*, Will your Lordſhip ask this Witneſs any Queſtions?

E. of War. No, my Lord.

L. H. St. Mr. Attorney, if you have any other Witneſſes, pray call them.

Another Witneſs was produced, that belonged to the Ship *and* Caſtle *in* Cornhill.

Mr. At. Gen. This Man will give you an Account what paſt at his Houſe at that time, and between whom; Pray will you tell my Lords who was at your Houſe the 30*th.* of *October* laſt, and what paſt there then.

Witneſs. My Lord of *Warwick*, Capt. *James* and Capt. *Dockwra*, and when my Lord of *Warwick* came in, I thought my Lord was in a very great Concern, and called for Pen, Ink and Paper, and I fear'd there was ſome quarrel in hand, but they ſaid no, the Quarrel was over, and ſays, my Lord of *Warwick*, I am afraid poor *Coote* is killed.

Mr. At. Gen. Did you obſerve any deſire to be private?

Witneſs. No indeed, I cannot tell that.

Mr. At. Gen. How long did they continue there?

Witneſs. About 6 a Clock my Lord of *Warwick* and Capt. *James*, and Capt. *Dockwra*, and Capt. *Duckingfield* went away.

Mr. At. Gen. Can you tell who went with my Lord *Warwick*?

Witneſs. No indeed, I cannot tell who went with my Lord *Warwick*; there came in a Gentleman in Black, whom I knew to be my Lord of *Warwick*'s Steward, and he came and ſpoke ſome words to my Lord of *Warwick*, about a quarter of an Hour after they came in, and then they went away, for after that I did not hear any further Diſcourſe.

Mr. At. Gen.

Mr. *At. Gen.* What became of the reſt of the Company?

Witneſs, They went away; I do not know what became of them, nor whether they went; ſome of them went in and out of one Room into another ſeveral times, two or three times, and came out again.

Mr. *At. Gen.* My Lord, we have done with this Witneſs.

L. H. St. My Lord *Warwick*, will you ask him any Queſtions?

E. of Warw. No, my Lord.

L. H. St. Mr. Attorney, who is your next Witneſs?

Mr. *At. Gen.* Mr. *Salmon* the Chirurgeon, who by the Coroner's Order ſearched the Wound. [*Who was Sworn.*

Mr. *At. Gen.* Pray, Sir, was you ordered by the Coroner to view the Body of Mr. *Coote*?

Salm. Yes, I was ordered by the Coroner to inſpect the Body of Captain *Coote*, and to give the Jury an account of the nature of the Wounds.

Mr. *At. Gen.* Pray upon the view of the Body, what Wounds had he?

Salm. There was two Wounds; one on the Breaſt near the Collar-bone running downwards very deep.

Mr. *At. Gen.* Pray what part of the Breaſt was it, and how deep was it?

Salm. It was on the left part of the Breaſt near the Collar-bone, and it penetrated four or five Inches.

Mr. *At. Gen.* Can you gueſs at what ſort of Sword it was that made the Wound?

Salm. No indeed, Sir, I cannot.

Mr. *At. Gen.* Was it a broad Sword, or a little Sword?

Salm. The Orifice was about the length of half an Inch, and about the depth of five Inches.

Mr. *At. Gen.* Was that made with a broad Sword, or with a narrow Sword?

Salm. Indeed I cannot tell.

Mr. *At. Gen.* You ſay he had another Wound; where was that?

Salm. That was on his left Side too, near unto the ſhort Ribs, under the laſt Rib, which was about the length of an Inch, and of the depth of ſix Inches, and it run through the Diaphragma.

Mr. *At. Gen.* Did you take one of thoſe Wounds, or both of them to be mortal?

Salm. I did look upon either of them to be mortal, and to be the occaſion of his death.

Mr. *At. Gen.* Can you tell whether they were both made with one and the ſame Sword?

Salm. Indeed I cannot tell that, whether they were made with one Sword, or two.

Mr. *At. Gen.* Cannot you tell how they appeared to be? I ſuppoſe you probed them.

Salm. Yes, I probed them both; one was quite through the Diaphragma.

Mr. *At. Gen.* What time was it that you viewed the Body by the Order of the Coroner?

Salm. I ſaw the Body at Seven a Clock on *Sunday* night.

Mr. *At. Gen.* If my Lord of *Warwick* deſire to ask him any Queſtions, he may.

E. of Warw. My Lord, I deſire to ask him, whether any of the Wounds were large enough to be made by a Sword run up to the Hilt?

Salm. No, my Lord, ſure that they were not.

E. of Warw. My Lord, I deſire to know of him, whether both thoſe Wounds were given before or behind?

Salm. I can only tell you the length and depth by following of the Probe; the one was downwards, and the other upwards.

Mr. *At. Gen.* Do you ſuppoſe both thoſe Wounds were given when the Perſon was ſtanding backward or forward?

Salm. 'Tis impoſſible to tell how they were given, becauſe of the variety of the Poſtures of the Body in the divers Capacities thereby of receiving the Wounds.

Mr. *At. Gen.* Pray can you tell whether they were given by one and the ſame Sword or no?

Salm. Indeed I cannot tell.

Mr. *At. Gen.* Do you know any thing to the contrary?

Salm. I cannot ſay any thing for it, or againſt it.

E. of Kingſton. My Lords, this Witneſs, if I apprehend him right, ſays, the Wound on his Side was a large Wound.

Salm. Yes, a very large Wound, of the length of about three quarters of an Inch at the Orifice, and five or ſix Inches deep.

E. of Kingſton. I deſire he may tell whether that Wound could be given by any other than a broad Sword.

Salm. I cannot tell that.

E. of Rocheſter. Indeed, my Lords, I would have him asked this Queſtion again; I know not whether he can anſwer it or no; but I cannot but think it is proper to have ſome account of this matter. In all Enquiries before the Coroner, there is a Judgment to be made of the Nature of the Wound, in order to form the Indictments, and that the Jury may know with what ſort of Weapon it was made; and it is his Profeſſion, as a Chirurgeon, to know ſuch matters.

L. H. St. Mr. *Salmon*, you hear what is required of you by my Noble Lords, and the Obſervation which is made. You are the Chirurgeon ſent for by the Coroner, on purpoſe to inſpect this Body; and when you did ſo, it was incumbent upon you to conſider and give information, as well with what ſort of Inſtrument the Wound was given, as the length and depth of the Wound, that the Jury might conſider upon all the Circumſtances of the Occaſion, and Manner of the Party's Death: And my Lords would know whether by the Orifices of the Wounds when you inſpected them, you can make a Judgment if they were made by ſeveral Swords, or the ſame Sword.

Salm. I cannot ſay that I ſaw any difference between the Orifices, as to the nature of the Inſtrument they were given with, nor whether they were made by one and the ſame Sword or no, only the one Orifice was bigger than the other; that of the Side was bigger than that at the Collar-bone.

L. H. St. Then ſo far we have light (if I apprehend you rightly) the Orifice of the upper Wound was not near ſo wide as that of the lower; but it ſeems to be much in one of your Profeſſion not to be able to judge whether the Wounds were given with the ſame ſort of Sword, when there was ſuch a difference in the Orifice.

Salm. That below was a deeper Wound; and there was a conſiderable difference between the largeneſs of the one and the other.

Ld. Audley. My Lords, I deſire he may tell your Lordſhips how far backward the Wound in the Side lay.

Salm. It was directly on the left Side, immediately under the two laſt Ribs, and paſt through the Diaphragma.

M. of Normanby. Pray, my Lords, let him point with his Finger whereabouts it was.

L. H. St. My Lords would have you ſhow them with your Finger whereabouts it was. [*Which he did.*

E. of Warw. It is a very material Queſtion for me that he ſhould anſwer, whether he did believe that one and the ſame Sword might not give both Wounds?

Salm. I cannot ſay any thing of it one way or other; but one Wound went much further than the other, becauſe it was in a fleſhy part; and in ſuch a caſe, the further a Sword goes in, it makes the Wound larger.

Mr. *At.*

Mr. *At. Gen.* Then our next Witneſs is *Stephen Turner*, who was Mr *Coote*'s Man, and he will give you an account what Sword his Maſter had, and where he found it. [*He was Sworn, a Sword was ſhewn him.*

Turn. This was my Maſter's Sword Mr. *Coote*'s, and I never ſaw it after he went out in the morning till I ſaw it in the hands of the Conſtable, and afterwards before the Coroner.

Mr. *At. Gen.* What time did you hear of your Maſter's death?

Turn. It was about nine a Clock next morning that I heard he was dead.

Mr. *At. Gen.* Where was your Maſter's Body?

Turn. It was in St. *Martins*-Lane.

E. of Tanckerville. I would deſire he might be asked one Queſtion, whether his Maſter uſed his left Hand or his right?

Turn. I do believe he was a right-handed Man; I did never ſee him Fence. It was on the *Sonday* morning that I went to the Round-houſe, where I found my Maſter dead.

E. of Warw. I deſire he may be asked whether he has not obſerved a particular Kindneſs and Friendſhip between his Maſter and me?

Turn. Yes, my Lord; I have ſeveral times waited upon my Maſter, when my Lord and he was together, and they were always very civil and kind one to another, and I never heard one Word of any Unkindneſs between them.

E. of Warw. Whether he knows of any Quarrel that was between us?

Turn. No, I never did.

E. of Warw. I deſire he may be asked, whether he did not uſe to lie at my Lodgings ſometimes?

L. H. St. You hear my Lord's Queſtion; what ſay you, did your Maſter uſe to lie at my Lord of *Warwick*'s Lodgings at any time?

Turn. Yes, very often.

Mr. *At. Gen.* Pray call *Pomfret* again, and let him ſee the Sword.

[*Then he came in, and two Swords were ſhewn him.*

Mr. *At. Gen.* I deſire he may acquaint your Lordſhips what he knows of thoſe two Swords.

Pomf. Theſe two Swords were brought in by ſome of the Company that came to my Maſter's Houſe, and when they were ſhewn to Capt. *French* in the morning, he owned this to be his, and the other to be Mr. *Coote*'s; and he deſired that notice might be taken that his Sword was dirty, but not bloody, and there was ſome Blood upon the other.

Mr. *At. Gen.* Who brought in Mr. *Coote*'s Sword?

Pomf. Indeed I cannot tell.

Mr. *At. Gen.* Then our laſt piece of Evidence, my Lord, will be that of Mr. *White* the Coroner. [*Who was Sworn.*

L. H. St. What do you ask him, Mr. Attorney?

Mr. *At. Gen.* From whom had he theſe Swords? [*The Swords were ſhewn him.*

White. May it pleaſe your Grace, theſe Swords were delivered to me by the Conſtable.

Mr. *At. Gen.* My Lord, I deſire he may be asked, whether upon his view of the Body he looked upon the Wounds, and whether he did apprehend they were given by one and the ſame Sword?

White. May it pleaſe your Grace, when I had Sworn my Inqueſt, I ſent for the Chirurgeon that was here before, and gave him order to probe the Wounds, that the Jury might know the nature of them, in order to the drawing up the Inquiſition, and I did expreſly ask him, Whether he found any ſuch diſtinction between them, that they were given by one and the ſame Weapon, or different Weapons? He ſaid as he ſays now, That he could not tell whether the Wounds were given by two Swords, or by one; but he did apprehend there was a great difference between them, and ſo did I; but generally the Orifice of a Wound does cloſe up when the Body is

cold,

Gold; one of the Wounds were nearer the left Side than the other, to the best of my remembrance it was almost behind him.

Mr. Att. Gen. We have done with our Evidence, until we hear what my Lord of *Warwick* says to it.

L. H. St. My Lord *Warwick*, will you ask this Witness any questions?

E. of War. No my Lord.

L. H. St. Make Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Ser. at Arms. O yes, O yes, O yes. His Grace, my Lord High-Steward of *England* does Strictly Charge and Command all manner of Persons here present, to keep Silence upon pain of Imprisonment.

L. H. St. My Lord of *Warwick*, the Kings Councell have made an end of giving Evidence for the King; now is the proper time for you to enter upon your Defence.

E. of Warw. May it please your Grace, and you my Noble Lords, my Peers. I stand here before Your Lordships accused of the Murther of Mr. *Coote*, of which I am so Innocent, that I came and voluntarily Surrendred my self so soon as I heard your Lordships might be at leisure to Try me; and had sooner done it, but that the King was not then here, nor your Lordships Sitting, and had no mind to undergo a long Confinement; and now I think I might well Submit it to your Lordships Judgment, even on the Evidence has been offered against me, whether there hath been any thing proved of Malice Prepense, or my being any Actor therein, so as to adjudge me Guilty. And I think I may with humble Submission to your Lordships say, that my Innocence appeareth even from several of the Witnesses who have been examined against me, which I will not trouble your Lordships to Repeat, but submit to your Memory and Observation.

But my Lords, the Safety of my Life does not so much concern me in this Case, as the vindication of my Honour and Reputation, from the false Reflections to which the Prosecutor has endeavoured to expose me, and I shall therefore beg your Lordships patience to give a fair and full account of this matter; In which the Duty I owe to your Lordships, and to Justice in general, and the right I owe to my own Cause in particular, do so oblige me, that I will not in the least prevaricate, neither will I conceal or deny any thing that is true.

My Lords, I must confess I was there when this unfortunate Accident happened, which must be a great misfortune in any Case, but was more so to me in this, because Mr. *Coote* was my particular Friend, and I did all I could to hinder it, as your Lordships may observe by the whole proceedings.

It was on the *Saturday* Night when my Lord *Mohun* and I, and several other Gentlemen met at *Locket*'s where the same Company used often to meet, and in some time after several of us had been there, Mr. *Coote* came unexpectedly, and for some time he and we were very Friendly, and in good Humour, as we used to be with each other: But then there happened some reflecting Expressions from Mr. *Coote* to Mr. *French*, who thereupon called for the Reckoning, and it being paid, we left the upper Room, and I proposed to send three Bottles of Wine to my own Lodging, and to carry him thither to prevent the Quarrel. But while the Company stop't to call for a Glass of Ale at the Barr below, Mr. *Coote* (whose unfortunate Humour was sometime to be Quarrelsome) did again provoke Mr. *French* to such degree that they there drew their Swords, but we then prevented them of doing any mischief; then Mr. *Coote* still insisting to Quarrel further with Mr. *French*, my Lord *Mohun* and I proposed to send for the Guards to prevent them: But they had got Chairs to go towards *Lincoln's-Fields*, and my Lord *Mohun* and I as Friends to Mr. *Coote*, and intending to prevent any hurt to him, did follow him in two other Chairs, and as he was going up St. *Martins-Lane* stop'd him, and I extreamly there pressed him to return and be Friends with Mr. *French*, or at least defer it, for that the Night was very Dark and Wet; and while we were so perswading of him, Mr. *French* in one Chair, and Mr. *James* and Mr. *Dockwray* in two other Chairs past by us, (which we ghess'd

gheſs'd to be them) on which Mr. *Coote* made his Chairmen take him up again, and becauſe the Chairmen would not follow Mr. *French* faſter, threatned to prick him behind, and when we were got to *Green-ſtreet*, and got out of our Chairs, Mr. *Coote* offered half a Guinea to be changed to pay for all our three Chairs, but they not having Change, he deſired Lord *Mohun* to pay the three Shillings which he did. And in a few Minutes after, Mr. *Coote* and Mr. *French* Engaged in the Fields, whither I went for the Aſſiſtance and in Defence of Mr. *Coote*, and recieved a very ill Wound in my right Hand; and there this fatal Accident befel Mr. *Coote* from Mr. *French*, whom Mr. *Coote* had dangerouſly Wounded, and I muſt account it a great unhappineſs to us all who were there: But ſo far was I from encouraging of it, that I will prove to your Lordſhips that I did my utmoſt endeavours to prevent it; ſo far from any deſign upon him, that I expoſed my own Life to ſave his; ſo far from prepenſe Malice that I will by many Witneſſes of good Quality and Credit prove to your Lordſhips a conſtant good and uninterrupted Friendſhip, from the firſt of our acquaintance to the time of his death; which will appear by many Inſtances of my frequent Company, and Correſpondence with him, often lending him Money, and paying his reckonigns, and about two Months before his death lent him an hundred Guineas towards buying him an Enſign's Place in the Guards, and often, and even two Nights before this, he Lodged with me, and that very Night I paid his reckoning.

And when I have proved theſe things, and anſwered what has been ſaid about the Sword, and what other objections they have made, I doubt not but that I ſhall be acquitted to the entire ſatisfaction of your Lordſhips, and all the World that hear it.

Before I go upon my Evidence, I will crave leave further to obſerve to your Lordſhips that at the *Old-Baily* when I was abſent, Mr. *French*, *James* and *Dockwray* have been all Tried on the ſame Indictment now before your Lordſhips, and it was then opened and attempted as now it is, to prove it upon me alſo; and by moſt of them the ſame Witneſſes who have now appeared; and they were thereupon Convicted only of Manſlaughter, which could not have been, if I had been guilty of Murther. And on that Trial it plainly appeared that Mr. *French* was the Perſon with whom he quarrelled, and who killed him. And now I will call my Witneſſes.

L. H. St. Will your Lordſhip pleaſe to go on to call your Witneſſes, for the Proof of what you have ſaid; that is the Method, and then you are to make ſuch Obſervations as you pleaſe.

E. of Warw. My firſt Witneſs is Capt. *Edmond Keeting*, who was with me at *Locket's*, but went away before Capt. *Coote* or any of them came, and he will tell you I was with him a while.

Then Capt. *Keeting* ſtood up.

L. H. St. Capt. *Keeting*, you are not upon your Oath becauſe the Law will not allow it. In Caſes of this Nature the Witneſſes for the Priſoner are not to be upon Oath, but you are to Conſider that you ſpeak in God's preſence, who does require the Truth ſhould be teſtified in all Cauſes before Courts of Judicature, and their Lordſhips do expect that in what Evidence you give here, you ſhould ſpeak with the ſame regard to truth as if you were upon Oath; you hear to what it is my Lord *Warwick* deſires to have you examined, what ſay you to it?

Capt. *Keeting*. My Lord, I will tell your Lordſhip all the matter I know of it, I met with my Lord of *Warwick* that Evening at *Tom's* Coffee-houſe, and we continued there till about Eight at Night, I went away to ſee for a Gentleman that owed me Money, and afterwards I went to *Locket's*, and while I was there, the Drawer came up and told me my Lord of *Warwick* deſired to ſpeak with me, and when he came up into the Room, he ſaid he was to meet with my Lord *Mohun* there and Captain *Coote*, and he aſked me if I knew where Capt. *French* and Capt. *James* were, I told him I Dined with Capt. *Coote* at *Shuttleworth's*, and in a while after Capt. *Coote* came in, and about an Hour and an half I think, I continued there, and

Captain *French* came in; Captain *Dockwra* and we drank together for an Hour and an half, and they admired about 10 a Clock that my Lord *Mohun* was not come, and I payed my Reckoning not being very well, and away I went home, Mr. *James* came in just before I went away, but there was no Quarrelling, nor any thing like before I went away.

E. of War. My Lord, I desire he may be asked, Whether we did not usually meet there as Friends, especially Captain *Coote* and I?

Capt. Keeting. Captain *Coote* and my Lord of *Warwick* used to be almost every Day together at that Place.

E. of War. Pray did he ever know or observe any Difference or Quarrel between Captain *Coote* and me?

Capt. Keeting. No, my Lord, I never saw any thing but the greatest Friendship between my Lord of *Warwick* and Captain *Coote* that could be, I was with them and saw them together almost every day.

L. H. St. Have you any thing further to Examine this Witness to?

E. of War. No, my Lord, I have no other Question to ask him.

L. H. St. Who is your next Witness, my Lord?

E. of War. My Lord, I suppose I shall not need to trouble you to Examine the Chairmen over again; Your Lordships have heard what they can say, I desire Colonel *Stanhope* may be called.

Who it seems stood by the Chair of State, and it was some while before he could get round to come to the Place where the Witnesses were to stand.

L. H. St. While this Witness gets round, if your Lordship has any other Witness ready to stand up, pray let him be called.

E. of War. To prove the Kindness between Captain *Coote* and me, I desire Colonel *Blisset* may be called. [*Who stood up.*

L. H. St. What is it your Lordship asks this Witness, or calls him to?

E. of War. To testifie what he knows of any Kindness or Unkindness between Captain *Coote* and me; whether he has not been often in our Company?

L. H. St. Have you been often in Company with my Lord *Warwick* and Captain *Coote?*

Col. Blisset. Yes, my Lord, I was very well acquainted with both of them for a Twelve Month past before this Accident, and I have often been in their Company, and I always observed that there was a great deal of Friendship and Kindness between them.

E. of War. My Lord, I desire he may tell any particular Instance that he knows or can remember.

Col. Blisset. I remember when Captain *Coote* had his Commission in the Regiment of Guards, he was complaining of the Streightness of his Circumstances; he was to pay for his Commission 400 Guineas, and said he had but 300 for to pay for it, and my Lord of *Warwick* did then say to him, Do not trouble your self about that; or let not that disturb you, for I'll take care you shall have 100 Guineas, and he said he would give Order to his Steward to pay him so much, and I was told afterwards that he did so.

E. of Warw. I desire he may tell if he knows of any other particular Instances of my Friendship to Mr. *Coote.*

Col. Blisset. Once when he was arrested by his Taylor for 13*l.* my Lord lent him five Guineas, and used very frequently to pay his Reckoning for him.

E. of Warw. I desire he may tell if he knows any thing else; and whether he has not layn at my Lodgings, and particularly but some small time before this Accident happened.

Col. Blisset.

Col. Blisset. About ten Days before this unhappy Accident happened, I was at my Lord of *Warwick*'s Lodgings, and when I came there I found Captain *Coote* there a Dressing himself; and I asked him how that came to pass, and he told me they had been up Late together, and that he had sent home for his Men to dress himself there; upon which I did observe that they had been a Rambling together over Night, and there were a very great Familiarity between them.

E. of Warw. Did you observe any Quarrel between us?

Col. Blisset. No; None at all; I never knew of any Quarrel between my Lord of *Warwick* and Captain *Coote*, but I observed there was a particular Kindness between them, and a great deal of Friendship I know my Lord of *Warwick* shewed to him, in Paying of Reckonings for him, and Lending him Money when he wanted.

E. of Warw. My Lord, I desire he may be asked, whether he does not know that Captain *Coote* was straitned for Money.

Col. Blisset. I did hear Captain *Coote* say, that he had not received any thing from his Father for 13 Months, and his Father was angry with him, and would not send him any supply, because he would not consent to cut off the Intail, and settle Two or Three hundred Pounds upon a Whore he had.

M. At. Gen. Pray Sir will you consider with your self, and though you are not upon your Oath, answer the Questions truly, for you are obliged to speak the Truth though you are not Sworn, when ever you come to give your Testimony in a Court of Judicature; Pray acquaint my Noble Lords here, whether you did never hear my Lord *Warwick* complain of Captain *Coote*.

Col. Blisset. No, I never did hear him complain of him.

Mr. Att. Gen. Did you never hear the least Word of any Quarrel between them?

Col. Blisset. No, indeed, I did never hear of any Quarrel between them.

Mr. At. Gen. Did you never hear of any Unkindness at all?

Col. Blisset. No indeed, my Lord, not I; I never so much as heard of the least Unkindness whatsoever.

L. H. St. Well then, my Lord, who do you call next?

E. of Warw. Now Colonel *Stanhope* is here, I desire he may be asked the same Question, whether he does not know the particular Friendship that was between Captain *Coote* and me, and what Instances he can give of it?

L. H. St. You are to consider, Sir, though you are not upon your Oath, you are in a great Court, and under no less strict Obligation to relate the Truth and nothing but the Truth; You hear what my Noble Lord asks you?

Colonel Stanhope. My Lord, I have known my Lord *Warwick* and Captain *Coote* for about a Twelve Month, and I did perceive that they did always profess a great Kindness for one another.

E. of Warw. I desire to know of him, whether he observed any Particular Friendship between Captain *Coote* and me, much about the time of this Business.

Col. Stanhope. About 8 or 10 Days before this unhappy Accident, I went to wait upon my Lord of *Warwick* twice at his Lodgings; once I found Captain *Coote* there, one of them was in Bed, and the other was Dressing of himself; I thought they were very good Friends that were so Familiar, and I had good reason to think so, because of that familiarity; both the times that I was there when I found them together, was within eight Days before the Accident happened.

E. of Warw. The next Witness I shall call will be *Mr. Disney.*

Mr. At. Gen. But before Colonel *Stanhope* goes, I desire to ask him this Question, Whether he did never hear or know of any Unkindness between my Lord of *Warwick* and Captain *Coote*?

Col. Stanhope.

Col. Stanhope. No, indeed I did not, I always thought them to be very good Friends.

L. H. St. Will your Lordship go on to your next Witness?

E. of Warw. Yes, my Lord, there he is, Mr. *Disney*; I desire he may be asked what he knows of any Expressions of Kindness and Friendship between me and Captain *Coote*.

Mr. Disney. About the time that Captain *Coote* was to have his Commission in the Guards, my Lord of *Warwick* received a Letter from him, wherein he desired him to lend him the 100 Guineas, according to his offer, for he had but 300 by him, and he said his Father was unkind to him, and he could have no Money from him, and he would be honest to him and pay it again as soon as he could; my Lord sent for his Steward, and ordered him to provide 100 Guineas for Captain *Coote* while I was there; and all the times that ever I saw them together, which was very frequent, there was the greatest Kindness between them that could be; and several times I have seen my Lord of *Warwick* pay Captain *Coote*'s Reckoning for him, and lent him Money when he wanted Money.

Mr. Att. Gen. I desire to ask you, Sir, this Question, though you are not upon Oath, yet you are obliged to speak the Truth in a Court of Justice as much as if you were upon Oath; Did you not know or hear any thing of a Misunderstanding or Quarrel about the time that this business happened?

Mr. Disney. No indeed; I was with them together but the Day before, and frequently, and I heard nothing of any Unkindness between them in my Life, nor never knew of any Quarrel between them, or any reason for it.

L. H. St. My Lord, who is it you call next?

E. of Warw. Colonel *Whiteman*. [*Who stood up.*

L. H. St. What do you call this Gentleman for?

E. of Warw. It is to the same Effect, to acquaint your Lordships with what he knows of the Conversation between Captain *Coote* and me.

Col. Whiteman. My Lord, I know my Lord of *Warwick* and Captain *Coote* were constant Companions together, they Dined together almost every Day for half a Years time almost; and as to this time, when this Business had happened, I went to my Lord of *Warwick*, being sent for by him, and found him at a Private Lodging, where he expressed a great deal of Concern for the Death of his dear Friend Mr. *Coote*, and he shewed me the Wound he had received in his Hand, and he desired he might be private, and he told me he believed People would make words of it then it was, because he did not appear; but he did but intend to keep himself out of the way till he could be Tryed, and I took what care I could to get him a Convenience to go to *France*.

Mr. Att. Gen. Pray, what reason did he give for his going away?

Col. Whiteman. The King being at that time out of *England*, and so the Parliament not Sitting, he said he did not love Confinement, and had rather be in *France* till the Parliament should meet and he might have a fair Tryal, which he thought he should best have in this House.

Mr. Att. Gen. But pray, Sir, Consider, You are bound to tell Truth and the whole Truth in such a Case as this: Are you sure there was no Unkindness or Quarrel between my Lord *Warwick* and Captain *Coote* about this time.

Col. Whiteman. No, I never knew of any Quarrel or Unkindness between them in all my Life.

L. H. St. My Lord, have you any more Witnesses?

E. of Warw. I have a great many Witnesses more to the same Purpose, but I think I need not trouble your Lordship with them, only I would call a Person that has been mentioned, that is my Steward.

L. H. St. What is his Name?

E. of War. Edmund Raymund. [*Who stood up.*

L. H. St. What Questions do you ask him?

E. of

E. of War. I desire he may tell what he knows of any Friendship between Captain *Coote* and me, and what particular Instances he can give of it.

Raymond. My Lord, I know that my Lord sent for me, and said Captain *Coote* had occasion for 100 Guineas to pay for a Commission in the Guards, which he had not Money to make up, and I know that they were constant Companions every day, did Eat together, and often did Lye together, and I did provide the 100 Guineas for him, and I always did observe that there was a very Great Friendship between them.

E. of War. My Lord, the next Witness I shall call will be Mr. *French*, who I hope, having been Tried and had his Clergy allowed him, will be a good Witness, I should be sorry to Interpose any thing that would be a hindrance to your Lordships giving Judgment in this Cause presently; he is able to give your Lordships an Account of the whole Matter, and though, I hope, I have no need of calling him as a Witness, yet I humbly offer it to your Lordships.

L. H. St. What say the Councel on the other side?

E. of War. My Lord, I do not insist upon it, I think I have no need of it?

L. H. St. Your Lordship must judge for your self how far it is for your advantage, to desire that this Matter should be Debated.

E. of War. I do not desire to take up your Lordships time, though I am very well advised, that he is a good Witness in Law.

E. of Roch. I apprehended it the Duty of a King's Councel to make Objection against any Witness that should be produced by the Prisoner; I am loath to give your Lordships any unnecessary Trouble, yet I own, that I am not satisfied that a Witness should be Offered and Rejected, though the Objection be not made and argued by my Lord, the Prisoner at the Bar: If a Witness be offered, and they think they have an Objection against him, if they do insist upon it it will occasion a Debate, and then we must Adjourn into the House of Lords.

L. H. S. It is not insisted upon by my Lord, as I apprehend. My Lord of *Warwick*, Have you any other Witness you would have called?

E. of War. I desire to ask Mrs. *Amy* a Question or two.

[*Then she stood up.*

L. H. St. What does your Lordship ask her?

E. of War. What she remembers passed at her House about my Sword, or any thing.

Mrs. Amy. My Lord, when I came into the Room where my Lord of *Warwick* and Captain *French* were, in our House, I stood by Captain *French* while his Wounds was dressing, and I saw my Lord of *Warwick*'s Sword, and looked upon it, and the Hilt and all the Shell was full of Blood, and it run down to the Bottom of the Sword Blade.

E. of War. I desire she may be asked, how soon that was after my coming in?

Mrs. Amy. It was in a quarter of an Hour after my Lord came in.

E. of War. I desire she may speak what sort of Sword it was at the Hilt, whether it were Open or Close?

Mrs. Amy. Indeed, I cannot say; but the Hilt was full of Blood, the Shell of it, and it run down to the Bottom of the Blade.

L. H. St. Has your Lordship done?

E. of Warwick. My Lord, I would only take notice that the Three Gentlemen that were on the other side, were Tryed at the *Old Bailey*, and found Guilty only of Man-slaughter; but now I being on his side, and not having any Malice to him, but always a great deal of Friendship, I submit it to your Lordships, whether I can be thought any ways Guilty of his Death; and I humbly hope your Lordships will hear my Councel, if you make any Doubt of that.

L. H. St. What is it your Lordſhip would have Councel heard to?

E. of War. To this Caſe, my Lord, Whether there being Six Perſons, Three of a ſide, one is killed, and I being Engaged on the ſide of him that was killed; the Three of the other ſide have been Tryed for the death of that Man; whether I, who was of his ſide be equally Guilty with them, who were on the other ſide, eſpecially, I engaging particularly with another of the Three, that were of the other ſide: That Queſtion I deſire my Counſel may Argue, whether I be equally Guilty with them that were on the other ſide, and who, notwithſtanding Death hap'ned in the Caſe, yet were found Guilty only of Man-ſlaughter.

L. Godolphin. My Lords, it has been moved by my Noble Lord at the Bar, that his Counſel ſhould be heard about Mr. *French*'s being Witneſs, whether he ſhould be a Witneſs or no; I think it would be much for the clearing of the Fact one way or other, if the Evidence of that Witneſs could be heard; but whether he can be heard, or not, according to Law, is a Queſtion that muſt be debated amongſt your Lordſhips, after your Lordſhips have heard the Councel on both ſides, and perhaps, the Opinion of the Judges upon their Arguments; and therefore I think we muſt Adjourn, to Conſider whether this Matter ſhall be Argued or no?

L. H. St. What ſay you to this Matter, Mr. Attorney?

Mr. At. Gen. My Lords, I ſhould agree with the Motion that is made, if there were any thing inſiſted upon by the Priſoner at the Bar, that would bear a Queſtion or Argument; but my Lord of *Warwick* himſelf has waved the Objection, and ſo I think there is no need for any Argument on our ſide.

L. Godol. I would agree with the Motion that was made for Adjourning, in order to Debate, but I deſire to be thus underſtood, if he thinks it for his advantage, that this Witneſs ſhould be heard for him, which he knows beſt, whether it be or be not; then I do ſuppoſe your Lordſhips will Adjourn, to Conſider of it in your own Houſe amongſt your ſelves; it will not be proper to enter into the Debate here, nor there neither, till you know what Objection the Councel for the King make againſt this Man's being an Evidence, and therefore we would know, it is fit to be known, whether my Lord's waving, or not inſiſting upon this Man's Teſtimony, be free and voluntary, and abſolue, or whether it be only in reſpect to the trouble it may put the Houſe to for the Debate.

L. H. St. My Lord *Warwick*, ſome of my Noble Lords obſerve you have deſired Mr. *French* ſhould be examined, and that your Councel may be heard to that point, Whether he be by Law a Witneſs, or not; ſeveral of my Lords think it reaſonable, Councel ſhould be heard, whether he be a Witneſs or not; or at leaſt that that Queſtion ſhould be conſider'd amongſt themſelves, if inſiſted upon; therefore your Lordſhip is to Declare, whether you do inſiſt upon it, or deſire to wave it.

E. of Warw. I wholly ſubmit my ſelf to your Lordſhips, but as I am adviſed by my Councel, I hope he is a good Witneſs, and I deſire my Councel may be heard to that point.

Mr. At. Gen. My Lords, in truth I acknowledge, according to the method of Law, the Objection ought to come of our ſide, but I think we have very good reaſon to oppoſe, that Gentleman being a Witneſs in this Caſe, even upon that Objection which my Lord has made himſelf upon the Conſideration, that he has been found Guilty of Man-ſlaughter, for the Death of this very Perſon. It is true, upon his Prayer, Clergy was allowed him, but the burning of the Hand was reſpited, and he was not Burnt in the Hand, and he is not Pardoned; and how far he can be a Witneſs in this Caſe, is the Objection; If a Man Convicted of Felony, that is within Clergy, Prays his Clergy, and it is allowed him, but he is not Burnt in the Hand, nor Pardoned, we apprehend he is no Witneſs; and that is the Objection we make againſt his Teſtimony to your Lordſhips.

L. H. St. My Lord *Warwick*, you hear what is ſaid by way of Objection againſt this Man's being a Witneſs. What ſay you to it?

E. of War.

E. of Warwick. For matter of Law, my Lords, I am not capable of ſpeaking to it, but I deſire my Councel may.

L. H. St. That which Mr. Attorney propoſes by way of Objection is Matter of Fact, and the Matter of Law does not ariſe till the Fact be ſettled, which muſt fall within your Lordſhips own Knowledge, who produce him as a Witneſs, and therefore you muſt Anſwer to that Fact your ſelf.

E. of Warwick. I deſire to know of your Lordſhips if a Man be Convicted of Felony, that is within Clergies, and Prays his Clergie, and it is allowed him, but the Burning of the Hand is reſpited, and there is a Warrant for his Pardon; whether he cannot be a good Witneſs, that his Clergie was allowed, and the Burning of the Hand reſpited; I have the Record here to ſhew.

L. H. St. My Lords, my Noble Lord at the Bar, inſiſting upon a Warrant for a Pardon, I muſt acquaint you with ſomething that has happened during your Lordſhips Sitting here this day; Since I came hither a Privy Seal was delivered to me, in order to paſs a Pardon for the Burning in the Hand of Mr. *French* for the Man-ſlaughter, for which he was Convicted at the *Old Baily*; ſo far I can acquaint your Lordſhips as to Matter of Fact.

E. of Warwick. My Lord, I am adviſed by my Councel, that he is a good Witneſs without a Pardon, or without Burning in the Hand.

L. H. St. What ſay you Mr. Attorney, to the Law? now you underſtand what the Fact truly is.

Mr. At. Gen. Yes, my Lord, and I do apprehend, with ſubmiſſion to your Lordſhip's Judgment; That a Man Convicted of Felony, tho' he Prays his Clergie, and has it allowed him, but is not Burnt in the Hand, nor has any Pardon, can be no Witneſs.

L. H. St. That is the Caſe upon which you are to form your Objections; Here is a Man produced as a Witneſs, who has been Convicted of Felony, within the Benefit of Clergie, has craved his Clergie, has had it allowed, but has not been Burnt in the Hand, nor Pardoned.

Mr. At. Gen. Then my Lords, with Humble ſubmiſſion upon the Matter of Fact ſo ſtated, I make this Objection, That he is no Witneſs in point of Law; He has been Convicted in one Reſpect, for the very Offence for which the Noble Lord the Priſoner at the Bar ſtands Indicted: tho' not in the ſame Degree as the Indictment ſets it forth, yet it is for the ſame Fact. Upon this Indictment Mr. *French* was Indicted at the Seſſions at the *Old Baily*, and there he was found Guilty of Man-ſlaughter, upon which he Prayed the Benefit of his Clergie, which was allowed him, but he was not Burnt in the Hand; thus ſtands the Caſe in Fact. Now, my Lords, the allowance of Clergie of it ſelf, does not diſcharge the Party from the Offence, ſo far as to ſet him *Rectus in Curia*, and make him in all Reſpects a Perſon fit to have the benefit and priviledges of a *Probus & Legalis Homo*, till he has paſt through thoſe Methods of ſetting himſelf Right in the Eye of the Law, that the Law hath preſcribed, and in order to ſet this matter in its true Light before your Lordſhips, it will be neceſſary for me to open to your Lordſhips, as far as I can, the Nature of this Benefit of Clergie, and what advantage did accrue to the Party, by having that Benefit allowed him, and likewiſe what Benefit he had by the Act that Enacted the Burning in the Hand, which was the Statute of 4. *Hen.* 7. And by that Act the Burning in the Hand was to be of no more effect, but only to ſhew that he had had his Clergy allowed him; that unleſs he were within Orders, he ſhould have it no more than once. Before that Act of Parliament, a Perſon might have had the Benefit of Clergie ſeveral times, but that Act limits it as to time, that it ſhall be but once: and therefore in order to the having of it known, whether a Man once had his Clergie allowed him, that did not produce his Orders, that Act provides there ſhall be a mark ſet upon him at the time of the allowance of this Clergie, as a Token that it was allowed him, and he was never to have it allowed afterwards, but even at that time he was to be delivered over to the Ordinary to make his Purgation:

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but ſince that Act ſeveral Statutes have been made about this Matter, I ſhall mention one that relates to your Lordſhips, and that is the Statute of *Edward* the 6th, which indeed does Enact, That in Caſe where a Peer is Convicted of Felony within the *Benefit of Clergie*, he ſhall be Diſcharged without being Burnt in the Hand, but then, and thus the Law ſtood till the Statute of 18 *Eliz. Cap.* 7. by which 'tis Enacted, That after the Burning in the Hand the Priſoner ſhall not be delivered to the Ordinary, but he ſhall be diſcharged; by virtue of which Act, after Burning in the Hand, the Priſoner hath made full Satisfaction to the Law, without that ſort of Purgation which was before requiſite to be made, but till he be Burnt in the Hand, or has his Pardon, he is not to be Diſcharged; it may be he may be Bailed out by the Judge, in order to get a Pardon, but ſtill he remains in *ſtatu quo*, as to his being a Witneſs, or any thing of that nature; his Credit is gone till it be reſtored by the King's Pardon, or his undergoing the Puniſhment that the Law requires; and no Man would ſay, that where one lies under a Conviction of Felony undiſcharged by Burning in the Hand, or Pardon, that he can be a Witneſs; he remains juſt as he was before, the Conviction remains upon him, which diſabled him to be a Witneſs; and that we ſubmit to your Lordſhips as the Caſe of this Perſon Capt. *French*.

Mr. Sol. Gen. My Lords, if your Lordſhips pleaſe to ſpare me one Word of the ſame ſide; ſure at Common Law there would be no difficulty at all, that a Perſon Convicted of Felony within the benefit of Clergy, unpardoned, and undiſcharged, could be no Witneſs; and ſince thoſe ſeveral Statutes that have been mentioned by Mr. Attorney, unleſs there be an actual Burning in the Hand, or a Pardon for that Burning in the Hand, ſure it cannot be pretended, that one Convicted of Felony can be admitted as a Witneſs; If my Lord of *Warwick* does inſiſt upon his Evidence a Matter of Right, we for the King do inſiſt upon it, that there is no Right at all in the Caſe; for *French* muſt be taken to be one Convicted of Felony, and not diſcharged without either Burning in the Hand, or Pardon, and then we are ſure it cannot be pretended in Law that he can be a Witneſs.

L. H. St. My Lords, the King's Councel have Stated their Objection, what is your pleaſure to have done in it?

E. of Rivers. I ſuppoſe, my Lords, that it will be neceſſary to hear what Anſwer my Lord of *Warwick* gives to this Objection.

L. H. St. Is it your Lordſhips pleaſure then, that the Councel aſſigned for my Lord *Warwick* be heard what they have to ſay to this Matter?

Lords. Ay, Ay, Ay.

Then Sir Thomas Powis *came to the Bar, and ſtood by the Earl of* Warwick, *and ſpoke thus.*

Sir T. Powis. May it pleaſe your Lordſhips, I am by the Order of this Honourable Houſe Aſſigned of Councel for this Noble Lord at the Bar, in Point of Law; and, my Lords, as to the preſent Queſtion that has been ſpoken to by the King's Council, I am a little ſurprized to hear it ſhould be wondered at, that my Lord of *Warwick* ſhould inſiſt upon it, that this Gentleman ſhould be Examined for him as a Witneſs, becauſe, with humble Submiſſion to your Lordſhips, I think the Authorities of Law will make for the Opinion on the other ſide. Mr. Attorney General ſays true, the firſt Statute that was made for Burning in the Hand, was that in 4 *Hen.* 7. before that time the Benefit of Clergy, even for Murder, was uſed to be allowed upon the Prayer of the Party, and he was thereupon delivered over to the Ordinary to make his Purgation, and that not only once, but *toties quoties*, let him demand it as often as he would, and as often as he offended it was allowed: This was thought ſuch a Priviledge as ought to be reſtrained; that Statute of the 4th of *Hen.* 7.

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takes notice that an ill uſe was made of it, and therefore does ordain, That it ſhould be allowed no more then once, unleſs to Perſons within Orders: And as a Means to know, whether it had been before allowed, or not, the Act does direct, that the Party Convicted ſhall be Burnt in the Hand, that is all the Act does appoint, it does no otherwiſe alter the Caſe; it does not impoſe it upon the Party as a Puniſhment for the Offence, but only as a Mark of Diſtinction, that if ever he came again before the Court, and being Convicted of the like Offence, ſhould pray the Benefit of Clergy, then upon Inſpection it might be known whether before he had been allowed his *Clergie* or not; and ſo ſtood the Law without alteration as to the manner of delivery of the Criminal over to the Ordinary to make his Purgation, with which the Temporal Law in the manner of doing thereof did not intermeddle; and therein conſiſted, with reſpect to this Matter, the *Benefit of Clergie*. Afterwards, by the Statute of *Edward* the 6th, the Peers were exempted from the Burning in the Hand; and then comes the Act that we rely upon, vvhich is, that of the 18 *Eliz.* that takes notice of the former Act of 4 *Hen.* 7. vvhich only ordered the Burning of the Hand for the purpoſes aforeſaid, but left the Party to be delivered over to the Ordinary to make his Purgation; vvhich vvas found to be a Matter attended vvith many Abuſes, and upon the Reformation thought fit to be aboliſhed, and taken away, becauſe it was only an outward appearance and ſhew of Purgation, and was often the occaſion of very great Perjuries, therefore it is taken totally away, and by this Act the Party ſhall have the *Benefit of Clergie* without making Purgation, as fully as if he had actually made it. But ſay they, There is ſtill left ſomething that the Law requires, which is, That he ſhould be firſt Burnt in the Hand, and if he be not Burnt in the Hand, or at leaſt Pardoned, he is not in that Condition, that the Law calls for in ſuch a Caſe, to ſet him *Rectus in Curia*; If he be Burnt in the Hand, or Pardoned by the King, they agree on the other ſide, that he may be a very good Witneſs. My Lords, that Act of Parliament of Queen *Eliz.* does impower the Court that Tries the Criminal, and before whom he is Convicted, not only to Burn him in the Hand, purſuant to the Act of *Hen.* 7. but alſo to detain him in Priſon for a year after; but yet I think that doth not ſignifie any thing one way or other, to reſtore him, or not reſtore him to his Credit, for I think the Burning in the Hand, which is a Mark of Infamy, was never intended as a Means, any more than Impriſonment for a year of Reſtoring a Man to his Credit; it was only to ſhew he had his *Clergie* once, and ſhould have it no more; The allowance of *Clergie* by the Statute of *Eliz.* operates as a Pardon, only ſaith the Statute, he ſhall not be delivered out of Priſon before he is Burnt in the Hand, according to the Statute of *Hen.* 7. No body can ſay, that the continuing in Priſon for a year, which the Court may order, though Burnt in the Hand, would, as to reſtoring of Credit, have operated one way or other: but that we inſiſt upon is, That the allowance of *Clergie* ſets him right in Court, ſince Purgation is aboliſhed, and is the ſame thing as if he had undergone the Ceremonial parts of a formal Purgation. It is the allowance of *Clergie* that makes the alteration or operation in this Caſe, by virtue of this laſt Act of the 18th of *Eliz.* for we take it, that he is to have the ſame *Benefit of his Clergie* as is if he had been delivered to the Ordinary, and Purgation had been made; and now the allowance of *Clergie* by this Act, gives the ſame benefit to the Party, as Purgation would have done before the Act, and he is in the ſame State and Condition as he would have been in Caſe of a Purgation, or of a Pardon by the King. The Authorities are all with us, there is a Caſe that is very well known among the Men of the Law in the *Fourth Report of My Lord Cooke*, *Holcroft*'s Caſe, who was Indicted and Convicted of Manſlaughter, and he prayed the *Benefit of his Clergie*; The Judges thought fit to reſpite their Judgment therein, but his Prayer was entred upon Record; And then an Appeal being brought againſt him, it came to be a Queſtion, how far he had had his *Clergie*,

for by the Stat. of the 3d of *H.* 7. an Appeal will lie notwithſtanding a Conviction, if the Party have not had his *Clergie*; and in this Caſe it was adjudged, that the Party having prayed his *Clergie*, he ſhould have the ſame benefit as if the Court had ordered every thing to be actually Executed, which ought thereupon to be done; and ſurely then it can be no Queſtion, whether a Man ſhall be a Witneſs or no, who has had his *Clergie* allowed. It is ſo entred upon Record, that the Book was adminiſtred to him, and that he read as a Clerk, for the Party has done as much as he can; prayed the *Benefit of his Clergie*, and had it allowed, and ſo it is entred upon Record. The Reſpiting of the Burning of the Hand till the King's Pardon be obtained, ſhall not ſure put him in a worſe Condition than he would have been, if he had actually been Burnt in the Hand. My Lords, I have in my Hand a Book which is of very great Eſteem, and that is, *The Reports of My Lord Chief Juſtice Hobbart*, wherein he declares his Opinion in this Point, and for whoſe Opinion every one of our Gown ever have teſtified a very great Veneration and Reſpect; The Caſe is that of *Searle* and *Williams*, wherein my Lord *Hobbart* has ſpoken ſo fully to this Matter, that I think it ought to put an end to the Queſtion: He ſays, the Stat. of *Eliz.* appointing the Burning in the Hand without Purgation, does operate as a Statute Pardon to all intents and purpoſes, and the Party having now the *Benefit of his Clergie* allowed, is in all reſpects in the ſame Condition as if he had been acquitted: That is the Opinion that he holds throughout that Caſe: I need not trouble your Lordſhips with Reading all the particular Words that he uſes, but only thoſe which relate to the thing now in Queſtion. Immediately before your Lordſhips he delivers his Opinion, *That whoſoever ſpeaks Words of Accuſation, reflecting upon a Man for any Offence for which he was Indicted and Convicted, and had had his* Clergie *allowed, an Action lies as if he had been totally acquitted from it; 'Tis not the Burning in the Hand, but the Allowance of* Clergie, *that ſets him right in his Credit in the Eye of the Law, and he is thereby in the ſame Condition, in that reſpect, that he would have been, if he never had had any Conviction upon him.* Towards the end of the Caſe his very Words are theſe, *Though the Statute ſaith, after Burning in the Hand, according to the Statute in that behalf made, he ſhall be diſcharged, and there is no Burning in the Hand, that makes nothing, for though it be a Caſe where the Hand ought to be Burnt, yet it is not ſo eſſential but a Man may have the Benefit of the Stat. though he be not Burnt; the King may pardon the Burning, for the Burning even in an Appeal is no part of the Judgment, nor ſo much as in the Nature of Puniſhment, but rather a Mark to notifie that he may have his* Clergie *but once*; Theſe are his very Words in this Caſe, ſo that the Statute of Queen *Eliz.* doth aboliſh Purgation, but gives the Party all the Benefit thereof, as if he had gone through it, and inſtead of delivering the Party to the Ordinary to make his Purgation, it ſays, he ſhall be delivered out of Priſon; but leſt it might ſeem to Repeal the Statute of *Hen.* 7. as to Burning in the Hand, it adds, *being Burnt in the Hand according to the Statute in that behalf provided*; By the Statute of *Hen.* 7th, he was firſt to be Burnt in the Hand, and then delivered to the Ordinary to make his Purgation; but by the Statute of *Eliz.* he is firſt Pardoned his Crime by being allowed the *Benefit of his Clergie*, without making his Purgation, and afterwards to be Burnt in the Hand before he be delivered out of Priſon; ſo that the Burning in the Hand is only a Condition precedent to his getting out of Priſon, not to his being reſtored to his Credit; The King may Pardon the Burning in the Hand undoubtedly, and he has gone a great way in this Caſe, for he hath given a Pardon as far as the Privy Seal, and that is ſufficient to ſhew his Gracious Intention of Pardoning it throughout, and if there be need, we hope it may paſs yet forward: What we inſiſt on is not only the Opinion of my Lord Chief Juſtice *Hobbart*, but he is followed therein by the Opinion of a Man of very great Authority, one no leſs Eminent than he in his Profeſſion, and that is my Lord Chief Juſtice *Hale*, in a Book of his that is Intituled, *His Pleas of the Crown*, which is but an Abridgment of

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what he intended upon that Subject under the Title of Clergy; when he comes to treat of the Conſequences of the allowance of Clergy, and what the ſeveral Effects of Clergy allowed ſhall be, he ſays it gives him a Capacity to purchaſe Goods, and retain the Profits of his Lands, and reſtores him to his Credit, according to the Caſe I have mentioned before in *Hobbart* of *Searle* and *Williams*; for that Caſe is particularly in that Book mentioned and referred to: Therefore I hope your Lordſhips will make no difficulty of Hearing this Witneſs; for we think the having his Clergy allowed him, is that which reſtores him to his Credit. If they have any other Objections againſt him, I hope we ſhall hear it from the King's Councel: But if this be ſtood upon in point of Law as an Objection, That though Clergy was allowed, he was not Burnt in the Hand, nor pardoned; I would have obſerved to your Lordſhips, That my Lord High Steward has told you it is ſo far gone towards the Pardon, that the King has ſhown his Intention to pardon by the Privy Seal; and we hope your Lordſhips will not let this Noble Lord at the Bar ſuffer any Prejudice by the not perfecting of the Pardon by actual paſſing of the Great Seal.

L. H. St. Mr. Attorney General, what ſay you to the Matters which have been urged?

Mr. At. Gen. My Lord, we have ſtated our Objection; we think there is nothing given as an Anſwer to it, and we ſubmit it to your Lordſhip's Judgment.

Marq. of Hallifax. My Lords, I deſire that the Queſtion that is to be decided before your Lordſhips, may be ſettled truly what it is.

L. H. St. If there be Six in Company, and one of them is killed, the other Five are afterwards indicted, and Three are Tried, and found Guilty of Manſlaughter, and upon their Prayers have their Clergy allowed, and the Burning in the Hand is reſpited, but not pardoned; Whether any of the Three can be a Witneſs upon the Trial of either the other Two.

Sir T. Powis. My Lords, with Submiſſion, though he were convicted of the Felony, yet upon Prayer of his Clergy, that being allowed him, That reſtores him to all the Capacities, we ſay, that he had before the Conviction, and particularly to his Credit; and for that we ſubmit our ſelves to your Lordſhips Judgment.

Marq. of Hallifax. I ſuppoſe your Lordſhips will have the Opinion of the Judges upon this Point, and that muſt be in the preſence of the Priſoner.

L. H. St. It muſt certainly be in the preſence of the Priſoner, if you ask the Judges Opinions.

Marq. of Hallifax. But in theſe Caſes, my Lords, it is uſual to hear the King's Councel to make a Reply: I deſire to hear what they would ſay to what has been offered by the Councel for the Noble Lord the Priſoner at the Bar.

Mr. *Serj. Wright.* My Lords, I did apprehend that the very ſtating of the Objection would have ſet this matter in its true light: For the firſt place, it is agreed on all hands, That this Mr. *French*, that is deſired to be a Witneſs, does ſtand convicted of Felony; and by the Law of *England*, while that Conviction remains upon him, till he be either purged or pardoned, he cannot be a Witneſs: By the Conviction his Credit is loſt; and till he be reſtored to his firſt Condition, he ſtands not ſo clear in the Eye of the Law that he can be an Evidence. The Councel for the Priſoner have objected, That if he either be pardoned, or Clergy allowed, he is put in the ſame Condition as if he had been acquitted.

My Lords, I muſt admit a Pardon reſtores to Credit; and I muſt likewiſe admit, That allowance of the Benefit of Clergy, and Burning in the Hand upon it, amounts in Law to a Pardon, or is equivalent to a Pardon in this matter: But the Fact here is not ſo; for here is neither actual Pardon, nor any Burning in the Hand: The Benefit of Clergy was prayed, and allowed; but that alone is not ſufficient; there muſt be an actual Burning in the Hand, or a Pardon of that Burning in the Hand, otherwiſe it cannot be a Satisfaction in Law, ſuch as ſhould put him in the ſame Condition as if he were acquitted. Your Lordſhips have heard

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what was ſaid by his Grace my Lord High Steward, That as to the Burning in the Hand, the King has been pleaſed to proceed ſo far as to grant a Privy Seal for the Pardon of the Burning in the Hand: But your Lordſhips very well know, and it cannot be inſiſted on to the contrary, by the Councel on the other ſide, That it is no Pardon until it be paſt under the Great Seal of *England*: So that here is no actual Pardon; nor is the bare allowance of Clergy, without Burning in the Hand, equivalent to a Pardon. My Lords, it muſt be agreed, That at the Common Law, Perſons that were convicted of Felony, were not reſtored to their Credit meerly by allowing the Benefit of Clergy to them; there was ſomething further to be done to regain Credit; the Party convicted muſt undergo another Trial before the Ordinary, which was commonly called Purgation; when any Man was convicted of Felony, he was upon his Prayer of the Benefit of Clergy to have it allowed to him, and if he could Read as a Clerk, his Life was ſaved. He was not diſcharged of the Felony, and therefore was delivered over to the Ordinary to be kept in Priſon until he had, by a ſort of Trial before the Ordinary, made his Innocence appear, and purged himſelf of the Fact charged upon him; and if he could not make his Purgation, he was to lie perpetually in Priſon; and notwithſtanding the allowance of Clergy, and delivery over to the Ordinary, yet was not the Credit reſtored, nor his former Capacities; he was not a legal Witneſs until he had purged himſelf of the Crime: It was the clearing themſelves of the Guilt, that reſtored ſuch Perſons to their Reputation and Credit, not the bare allowance of Clergy: Some Criminals were delivered to the Ordinary generally, thoſe might make their Purgation; others were ſpecially delivered, or delivered with a ſpecial Charge to the Ordinary, not to admit them to Purgation, *Abſque purgatione facienda*: Theſe latter could never be reſtored to Credit, except by the King's Pardon; for the Liberty of Purgation, which was the means of regaining their Credit was taken from them; their Guilt occaſioned their loſs of Credit; taking away that Guilt doth conſequentially reſtore Credit again; and this Benefit of Clergy was to be allowed as often as any Man had occaſion for it.

Thus the matter of Benefit of Clergy ſtood in Common Law, in reſpect of Purgation and reſtoring of Credit, till the Statute of 18 *Eliz. c.* 7. which was cited on the other ſide by Sir *Thomas Powis*; by which Statute Purgation is abſolutely taken away, and ſet aſide: And the Party being Burnt in the Hand, according to the Statute of 4 *H.* 7. is appointed by this Statute, 18 *Eliz.* to be diſcharged, and not to be delivered over to the Ordinary, as was before that time uſed. The delivering over to the Ordinary was in order to Purgation, and that by the laſt Statute is quite taken away, and the Party is to have the ſame Benefit by the having the Benefit of his Clergy and Burning in the Hand, as if he had made his Purgation; he ſhall be diſcharged: It is not his Reading as a Clerk, and that pronounced by the Ordinary, that gives him the Benefit of a Diſcharge, as if he had been purged of the Crime; but there muſt be the Burning in the Hand, that is the very Terms of the Statute upon which he is to be diſcharged; that muſt actually be done before he can be put into the ſame Condition that he was in before the Conviction, and conſequently make him capable of being a Witneſs. As for the Caſe of *Searle* and *Williams* that was cited by Sir *Thomas Powis*, that Caſe doth not oppoſe in this matter; there it was not needful to Burn the Perſon convicted; he was a Clerk in Holy Orders, and by Law exempt from Burning in the Hand; ſo it was not needful to Burn him, the Statute of 18 *Eliz.* not requiring any Perſon to be Burned in the Hand that were not ſo liable before then. The moſt that is ſaid in that Caſe by the Chief Juſtice *Hobbart* is, That in caſe where the Hand ought to be Burnt, it is not eſſential; but the Party may have the Benefit of the Statute, *i. e.* be diſcharged without Burning, and the King may pardon the Burning; and no doubt if the King pardons the Burning, it is as good and effectual as if the Hand had been actually Burnt. The King might pardon the whole, and conſequently any part; the Pardon of the Puniſhment ſupplies the Effect of it; no queſtion but a Pardon may ſupply the want of Burning in the Hand. Chief Juſtice *Hales* in his Book of

Pleas

Pleas of the Crown, Fol. 240. which I have here, says expressly, That Burning in the Hand is now, since the Statute, 18 *Eliz.* the Consequent upon the allowance of Clergy, which hath this Effect: First, it enables the Judges to deliver him. Secondly, it restores him to former Capacities. Thirdly, It restores him to his Credit, and so it puts him in the same Condition as if he were acquitted. What is it that hath this effect? The Allowance of Clergy, and Burning in the Hands: There is not to be an Allowance of Clergy till all be done which is required by Law: The Law requires that the Party be Burnt in the Hand, or that the King do pardon the Burning in the Hand before the Party be discharged; and, with humble Submission, it was never yet pretended, that any Person could have the full Advantage of the Benefit of Clergy, since the Statute of 4 *H.* 7. till he was Burnt in the Hand, or the Burning in the Hand was pardoned. Now, my Lords, to apply this to the Case in Question, it is on all Hands admitted, That Mr. *French* was convicted of Felony and Manslaughter, and is neither Burnt in the Hand, nor pardoned, but he has prayed the Benefit of the Clergy, and has had the Book given to him, to try if he can Read, and he certified he can Read; this is all that is done. I think it cannot be pretended he ought to be discharged until he is Burned in the Hand, or that Burning pardoned, as the Act requires; and if the Reading as a Clerk without Burning in the Hand, or pardon of it, be not sufficient in Law to entitle him to be discharged, Why should it be sufficient to restore his Credit? The whole together works the Discharge, and restores the Party. In the Case of *Burroughs* and *Fitzherbert* that has been cited, there a Man was convicted of Manslaughter, and prayed his Clergy, the Court did not allow his Clergy, but did advise upon it. This was held sufficient to bar an Appeal; for if Clergy had been allowed, it had clearly been a good Bar; and the Act of the Court in Advising upon the Prayer, and not allowing Clergy where it ought to be, shall not prejudice the Party convicted, but he shall be in the same state as if the Clergy had been actually allowed. But that has no likeness to the Case now before your Lordships; for here it is not pretended that Mr. *French* ever desired to be Burnt in the Hand, but that was refused in favour to him, which was done with intention, it seems, to get the King's Pardon for the Burning of the Hand, which is not yet obtained, and consequently I take it he is not entitled to that Benefit which the Law would give him, if he was either Pardoned or Burned in the Hand; he is not fully discharged of the Conviction, and therefore I think he ought not to be admitted a Witness.

L. H. C. What is the Resolution your Lordships please to take upon this matter? Is it your Lordships pleasure to have the Opinion of my Lords the Judges, who are here present, upon this Point.

Lords. Ay, ay, by all means have the Judges Opinions.

L. C. J. Tyrr. Two things have been mentioned at the Bar, which, I think, ought to be laid out of the Question.

1. The Consideration of a *Peer*, with respect to Burning in the Hand.

I suppose it is true (I am sure it ought not to be) insinuated, that, if any of your *Lordships* Degree should have the Misfortune to fall into the like Condition as the Gentleman now produced was, to be once convicted of a Clergyable Felony, there could be any Doubt of allowing such Peer as a Witness, without his having been Burnt in the Hand. Certainly, there could not; the Statute of 1 *E.* 6. exempts the Peers from such Penalty, and virtually repeals the Statute of 4 *H.* 7. as to so much. And the Statute of 18 *Eliz.* [illegible] *Hand* only, *According to the Statute in that behalf* (before) *Provided* [illegible] ing no Statute *Then*, or *Now*) in force to subject Peers to such [illegible] in such case, upon the Allowing the Benefit of the said Statute of 1 *E.* 6. (which is as much as Clergy without Reading or Burning) freed from Disability and other Penalties of the Felony, as much as Commons are by having Clergy formally allowed and being Burnt.

Here hath been mention of a *Pardon* of the Burning this Gentleman in the Hand; and, it seems, the Proceeding hath been so far as to Pass the *Privy Seal*. I do not question the King's *Pardoning* of the Burning's *being* as effectual as the Party's *undergoing* it. But, I say, Here is *no* Pardon (though Great Preparation for one). For, the *Sign Manual*, the *Signet*, the *Privy Seal*, are but *Warrants* in such Cases, and Countermandable. But, it is the *Great Seal* that speaks the King's *Last* and *Irrevocable* Intent, and *Passeth* the Pardon (or other *like* thing) to be Granted. And That hath not been obtained Here.

Now the Question is cleared, I take it to be this; *Whether* this *Commoner* being Convicted of *Felony*, and having his Clergy *Allowed*, but being *Unburnt* and *Unpardoned*, shall be Received and Allowed to be a *Witness*.

I am of Opinion he ought *Not*.

For (whatever Quality or Credit he might Personally be of,) he is, by Being and Remaining a *Felon Convict*, Render'd *Infamous* in the Eye of the Law. Upon the Conviction, he Lost, by the Intendment of Law, That *Credit* which is necessary to a Witness. And is not Restored to it by the bare *Allowing* of Clergy: But, is in the state as a Felon Convict would have been, before *Purgation*, at Common Law.

Clergy or (more properly called) *Benefit of Clergy*, is an Ancient Privilege, whereby a Clerk charged with Felony was Dismissed from the *Temporal* Judge, and Delivered in Custody to his *Ordinary*, Before whom he was to *Purge* himself, if he could, of the Offence; And if he failed in his Purgation, he was to Remain in the Ordinary's Prison.

I mean *Generally*. And I think it not proper to this Occasion, to Discourse of the *Special* Cases wherein the Delivery to the Ordinary was *absque Purgatione*.

This Privilege took its Rise originally from a Constitution of the *Pope*, excempting the Persons of the Clergy from the *Secular* Jurisdiction. This the *Canon-Law* is full in. But, *That* Law was not throughly Received Here in *England*. And This Matter was Moulded, Ordered, and Altered by our *Common*, and *Statute*-Law.

For Instance. The *Canon* Law gives the Privilege only to Men in *Holy Orders*: *Our* Law, in favour to Learning, and the Desire of the *English* Bishops, extended it to *Lay-Clerks*, as an Old Statute calls them, *i. e.* any Lay-man, that, by Reason of his Ability to Read, was (other Circumstances concurring) in a Possibility of being made a Priest. On the other side; *That* Law would not suffer the Clergy to be *Tryed* before Secular Judges: But, *Ours* hath, for several Hundred Years, subjected them to such Tryal.

But, the Common-Law was ever clear in this, That when a Man was Convicted of Felony, though, by the Allowing of Clergy, his *Life*, *Land*, and *Blood* were saved, yet, That Conviction laid him under divers Penalties and Forfeitures, some *Absolute*, others *Limited* and *Determinable*.

He forfeited all his Goods and Chattels, which he had at the time of his Conviction, *Absolutely*; not to be Restored by Purgation or Pardon.

He also forfeited and lost, 1. His *Liberty*, being to continue a Prisoner. 2. His *Capacity* of Purchasing more Goods or Chattels, and of Taking and Retaining the Rents and Profits of his Freehold Land to his own Use. 3. His *Credit*, so as not to be a Witness, Juror, &c. These Three Penalties he Remained till his Purgation. But, by that [illegible] Determined. As soon as he had made his Purgation, he was Restored to his Liberty, Capacities, and Credit.

Purgation was the Convict's clearing himself of the Crime, by his own Oath, and the Oaths or Verdict of an Inquest of Twelve Clerks (as Compurgators.) The Proceeding was Before the Ordinary. And, for the manner of it, Old Books speak of their making Proclamation for Persons to come in against his Purgation, and of their enquiring into his Life, Conversation, and Fame, and of other Formalities.

malities. In all which, several *Statutes* say, there were great Abuses. But it is certain, that, upon his Acquittal, the Ordinary pronounced him *Innocent*, and absolved from Infamy. And thereupon he was Discharged from the Imprisonment, Incapacities, and Discredit Incident to the Felony.

The Statute, 4 *H.* 7. brings in a new thing, Appointing that every Person Convict of Felony, should be *marked* in the Hand by the Goaler in open Court, *Before* he should be Delivered to the Ordinary. And This, was partly that they might taste of Corporal Punishment; But principally to notifie that they had had their Clergy. For, the same Statute, taking notice that Men were emboldened to Commit Murder, Rape, Robbery, and other Felonies, because they had the Benefit of Clergy *toties quoties*, Ordains that no person, who was once admitted to that Benefit, should ever have it again for a following Offence, unless he were within Orders and produced his Letters of his Orders, or a Certificate of them.

For this Act, *Perkin Warbeck* in his Declaration against *H.* 7. Brands him as an *execrable Breaker of the Liberties and Franchises of holy Church.*

Then comes the Stat. 18 *El.* C. 7. which, for so much as Concerns this Question, I desire to Read. It is in these Words.

For the Avoiding of sundry Perjuries and other Abuses in and about the Purgation of Clerks Convict, delivered to the Ordinaries, Be it Enacted that every Person which shall be Admitted and Allowed to have the Benefit or Priviledge of his Clergy, shall not thereupon be Delivered to the Ordinary as hath been accustomed, But After *such Clergy allowed, and* Burning *in the Hand according to the Statute in that behalf provided* [meaning that of 4 *H.* 7.] *shall* forthwith *be Inlarged and Delivered out of Prison by the* Justices *before whom such Clergy shall be Granted, that Cause notwithstanding.*

Then there follows a Proviso to this effect.

Provided nevertheless, and be it Enacted that the Justices before whom any such Allowance of Clergy shall be had, may for the further Correction *of such Persons, Detain and Keep them in Prison for such Convenient time as the same Justices in their Discretions shall think Convenient, so as the same do not exceed one Years Imprisonment.*

This Statute refers to *That* of H. 7. and follows the Order of it. As *That* appointed that the Convict should be Burnt before he should be delivered to the Ordinary to have the Benefit of Purgation. So *This* of 18. *El.* Appoints that he shall be Burnt before he shall be Discharged by the Justices, and have the Benefit thereby Intended (instead of Purgation.)

The Councel for the Noble Lord at the Bar say, that the *Allowance of Clergy* by Vertue of this Act, freeth this Man, and makes him *Rectus in Curia*, as if he had made his Purgation; and that by this Statute he is first pardoned his Crime, by being Allowed the Benefit of Clergy, without making his Purgation; and afterwards to be Burnt in the Hand before he be delivered out of Prison, and so the Burning is a Condition precedent to his *Getting out of Prison*, not to his being *Restored to his Credit.*

But I am to seek for any Ground for this Notion in this Statute. It doth not *Require* Clergy to be Allowed, nor *Give* any new Vertue or Operation to it, when Allowed. It supposeth such a thing to be by Virtue of the *Common Law*: But there it leaves it, if there be nothing more done. It is one Clause consisting of two Parts; 1. *Negative*; He that is Allowed his Clergy, shall *not* be Delivered to the Ordinary. 2. *Affirmative*; But after that, and Burning in the Hand *shall be* Delivered by the Justices.

Now, if it had stopped at the *first* Part, it had been so far from Pardoning or Restoring *any* Clerk Convict, that it had put *all* in the same Condition that those were, who were *without Purgation*, viz. to be perpetually Imprisoned, and Infamous. Indeed, it had not been *Reasonable* to take away such a Privilege from the Subjects, without some *Recompence*; and therefore it did not stop there. But proceeds to the 2d. Part, and Provides that those, who before were Delivered to, and by the *Ordinary*, shall now be Delivered by the *Justices*. But withal, it Declares when, and upon what Terms, *viz.* *After* Clergy Allowed, and *Burning in the Hand*. And

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This is a Satisfaction to be given to the Law, before they shall have the Benefit of it.

I Agree if this Convict had made that Satisfaction to the Law, he might have been a Witness; for, in that Case, he would have been freed from his Disredit by Vertue of the last Words of the said Clause. 'Tis true, the Words are only [*shall forthwith be Inlarged and Delivered out of Prison by the Justices*] which *Literally* Import nothing but Restoring his *Liberty*. But, under this prime Instance, are Implied and Intended all other particulars which a Convict might be Discharged of by means of Purgation. It was never the Intent of the Statute *meerly* to set him at Large, and leave him a Felon Convict. But when it is said *Delivered*, 'tis meant Delivered *Free*, freed from all Incident further Penalties, as he might have been if Delivered *upon Purgation*. This is a *Reasonable* Construction: to a Man that observes the Opposition in the Words, the Sense will appear to be as if the Law-makers had said, that instead of being Discharged *a Culpa et pœnâ* by the *Ordinary*, upon a *tedious* proceeding to Purgation, he shall now be so Discharged by the *Justices, forthwith*.

And this also is necessary to Vindicate the *Justice* of this Law; for, since it takes from him the means he had of Regaining his Credit, it is but just it should Restore it to him by this Way.

'Tis Objected, that it may as well be said that he shall not be Restored to Credit till he have suffered *Imprisonment, not exceeding a Year*, as that he shall not be Restored till *Burnt*. But, That receives an easie answer; for, if it were so, it would not Avail this Person. But, I take it to be otherwise. A Convict is Discharged from Imprisonment and all other Penalties incident to *the Conviction, forthwith* upon his Burning in the Hand. But if there be a Commitment made by Vertue of the Proviso, it is a Collateral and a new thing, and the Party is not then in Prison by Vertue of his Conviction, but by a fresh express Order of the Judges, made upon the heinousness of the Circumstances appearing on the Evidence. They may, and generally do, forbear to Commit at all. And when they do, it may be for a Month or two, at their Discretion. The Proviso calls it *a further Correction*.

As to the *manner* in which this Statute works this full Discharge, it hath been Disputed whether it be by *Supply of Purgation*, or rather by a kind of *Statute-pardon*. But, I think, that by force of the Statute the Party is Purged and freed of the Felony, and all Penalties incident to it in nature of a *Pardon*.

In what *manner* soever the Statute works it, 'tis manifest that it doth it not *But* upon a *Condition precedent*, viz. *After Clergy allowed, and burning in the Hand*. Now, this Person hath his Clergy allowed, but is not *Burnt* in the Hand, (nor has any *Pardon* for it.) And therefore is not yet Intitled to the Benefit of this Statute. My Lords Counsel say he is, because he hath his *Clergy allowed*. But, That is claiming the Advantage upon the performing of *one* Part of a joint Condition, which ought not to be had but upon performing *Both*. They might as well have pretended to it before the performance of *either*; The Statute says, after *Both* Clergy and Burning. They say also, that this Burning is no part of the *Judgment*, as hath been held in the Case of an Appeal. Be it so. But, I say, 'tis a part of the *Condition* in this Statute.

There is no Case in our Books against this Opinion. (But, on the Contrary, there are Authorities for it.)

Holcroft's Case is in no sort applicable to this Case; as was truly observed by the Kings Serjeant.

The Opinion of my L. C. J. *Hobart* in *Searl* and *Williams* Case, highly Considered, Confirms this. I have borrowed the Book from the Gent. at the Bar, and Read it. He saith expresly that where a Convict is *Liable* to be Burnt in the Hand, he is not Discharged and Restored without it; because the Statute says *After Burning*. But from thenceforth the Statute frees him from all further Punishment. But, he saith, that where he is *not* Liable to Burning, he shall have the same Benefit immediately upon the *Allowance of Clergy* only. So it was in the Case before him; which was *that* of a *Clerk in Orders*: for, *Searl* was a Clergyman. Parson of *Hey-don German* in *Essex*, and Convicted of Manslaughter. So it is, he says, in Case where the King *pardons* the Burning. And the last Words in the Case clearly shew

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his meaning, *viz. where the Statute says*, After *Burning*, *it Imports where Burning ought to be* &c.

To me the Law is evident. A *Peer* shall have this Benefit without *either* Clergy or Burning. A *Clerk in Orders*, upon Clergy *alone* without Burning. A *Lay-Clerk*, not without *Both*.

As I Remember, there hath been but one Authority more mentioned, and that is of my L. C. J. *Hale*, in his *Summary of the Pleas of the Crown*. I have Got hither *that* Book Also. To my understanding, He plainly Declares the same Opinion; and Cites the before-mentioned Case of *Searl* for Proof of it. His Words (so far as they Relate to this matter) are These;

What the effect of Clergy allowed?

In Ancient time the Consequent was Delivery to the Ordinary, either to make Purgation, or Absque Purgatione, *as the Case Required.*

But by Stat. 18 El. C. 7. *Now only* Burnt *in the Hand*, which *hath these effects*,

1. *It enables the Judges to Deliver him out of Prison.*
2. *It Gives him a Capacity to Purchase Goods, and Retain the Profits of his Lands.* Foxley's Case, 5 Rep.
3. *It Restores him to his Credit.* Hob. Seales Case.

The Word [*which*] used Here (whatever else it Do, or Do not Refer to) doth certainly Refer to the *next Antecedent*, that is, *Burning in the Hand*. and the Two *Books* which this most Learned Judge Cites, are full Authorities that 'tis This *Burning* which enables the Court to Deliver him, and that That *Delivering* which is then Due to him is, by good Construction, in lieu of a *Pardon*, which Restores him to his said *Capacity* and *Credit*.

To Conclude; The *Condition Precedent*, upon which the Restitution of this Person's Credit Depends, is not *Performed* (by his undergoing the said Punishment) nor *Discharged* (by the Kings Pardoning it;) and therefore he is *not* a Legal *Witness*.

E. of Rochest. If the rest of my Lords the Judges be of the same Opinion, so; and I hope you will not oblige them to deliver their Opinions at large to take up your Lordships time with Arguments of any length, for the Matter has been, I think, sufficiently debated.

Ld. Ch. Baron. My Lords, I am of the same Opinion.

Mr. Justice Nevill. And so am I.

L. H. St. My Lord *Warwick*, Have you any thing more to say to this Question?

E. of Warw. No, my Lord.

L. H. S. Then what is your Lordship's Pleasure? Is this Man to be admitted a Witness, or not?

Lords. No, no; we think by Law he can't be a Witness.

L. H. St. My Lord *Warwick*, my Lords are of Opinion, That this Person cannot be admitted as a Witness for you.

E. of Warw. My Lords, I submit to your Lordships Judgment in the Matter.

E. of Nottingh. My Lords, I am very glad your Lordships have had this Matter debated by the Council, that so it might be settled. All my Lords the Judges that are here, it seems, are of Opinion, that this Man can be no Witness, and therefore his Testimony must be rejected. But there is another Proposal that I have to make to your Lordships, of a Point that I think ought to be considered of: My Noble Lord at the Bar did suppose that he had proved before your Lordships, that he went into the Field not to fight on the side of the Party that was killed, but on the other side; and indeed that he went not to fight, but

to prevent a Quarrel, and thereupon he did ſtart a Queſtion, Whether it ſhould not be a Preſumption in Point of Fact and Law, that he, being on the ſide of the Party that was killed, ſhould not be reputed Innocent of his Death? Now I confeſs, upon the ſtarting of this Objection, I doubted of it, Whether if any one were preſent at the killing of a Man, where ſeveral People were engaged in fighting, on what ſide ſoever ſuch a Perſon were, either on the ſide of the Party that was killed, or on the other ſide, yet whatſoever Crime it was in thoſe that killed him, it was the ſame Crime in thoſe that were preſent at the Action. My Lord of *Warwick* did deſire, that his Councel might be heard upon that Point, if there be any Queſtion with your Lordſhips in that Caſe; and my Lord deſires his Councel may be heard to that Matter; it may occaſion a Matter of Debate, which cannot be in this place openly, but muſt be between your Lordſhips among your ſelves: Indeed, I think it reaſonable, that Councel ſhould be heard upon the Caſe.

L. H. St. My Lords, I think you are not arrived at that Queſtion yet; you are not to take for granted any part of the Fact, but are to debate among your ſelves, after the Proof is over, what that Proof does amount to.

E. of Roch. Indeed, my Lords, I hope you will not ſuppoſe any thing, and ſo take it for granted, that may occaſion any Debate, becauſe that is not to be done here in this place, but we muſt adjourn to another place for it. The bare putting of a Caſe by a Priſoner at the Bar, does not make that to be the Caſe truly in Point of Fact; for as far as I heard and underſtood the Noble Lord's Propoſal at the Bar, what he deſired to have his Councel heard to was, That he being one of Six that went into the Field, but going with a Deſign to part them, and not with any intention to promote the Quarrel, could not be in equal degree of Guilt with thoſe that were on the other ſide, who killed the Party: But now, my Lords, I take it, it is far from being granted on the other ſide that that is the State of the Fact; nay, my Lord himſelf owns that he was in the Field, and that he was engaged in the Combat with Mr. *James*; and then the Queſtion muſt be that is to be debated, Whether a Party that is concerned in a Quarrel where a Perſon is killed, is in equal degree guilty with thoſe that were on the other ſide againſt the Perſon that was killed? And then the Queſtion would be far different from what it would be otherwiſe, and as his Lordſhip did propoſe it: and if there be a Doubt in Matter of Fact, That ought to be ſettled here in this place, that afterwards it may be conſidered in another.

E. of Nottingh. My Lords, I cannot but agree with that Noble Lord, that the Matter of Fact ought to be ſettled, and then if any Debate ariſes thereupon, your Lordſhips are to return to your own Houſe, and there to debate what is your Judgment upon that Matter of Fact: But whatſoever Motion is made by the Noble Lord at the Bar, wherein he deſires to have his Councel heard, that I ſuppoſe may be conſidered here; and this Point having been ſtarted by my Noble Lord at the Bar as a Point of Law and not of Fact, I deſire to remind him of it, to know whether he does inſiſt upon it; if he does not move to have the Matter argued, then there is an end.

L. H. St. My Lords, I do not think you will hear Councel upon a Matter of Fact, and therefore it is not ripe (till the Fact be ſettled) for you to hear Councel.

E. of Warw. My Lords, I humbly pray, That you will hear my Councel as to that Point.

L. H. St. My Lord, this is a Matter of Fact indetermin'd, and not a Matter of Law: What Opinion their Lordſhips will be of when they have conſidered the Proofs as to the Fact, is one Step; when that is over, it will be the proper time, if any Doubt be remaining with their Lordſhips in Point of Law, to hear Councel, but upon bare Matter of Fact Councel is not to be allowed.

E. of Roch. My Lords, if there be any Debate among the Lords, Whether it be a Matter of Fact, or a Matter of Law, we muſt go up to our own Houſe;

but

but upon any Point of Law where Councel is to be heard, it must be in this Place in the Presence of the Prisonet, and afterwards your Lordships will Debate it among your selves.

E. of Nottingh. I hope, my Lords, the Councel would not state the Case otherwise than as it is really in Point of Fact; nor can this Noble Lord hope, that any thing will make an Impression upon my Lords, but what from the Fact rightly stated, but what is supported from the Evidence; and that which my Lord proposes is to have his Councel heard to a Matter of Law, which your Lordships will be Judges of after you have heard it, whether there be any weight in that which he supposes to be his Case, That a Person assisting in a Combat on the side of him that is killed, is in equal degree of Guilt with them that are on the other side; That possibly, if the Fact be agreed, may be a Point fit to hear Councel to, before your Lordships go to Debate it amongst your selves.

D. of Devon. If I am not mistaken, my Lord of *Warwick* owns his being one of them that fought, for he has offered Witnesses to prove, That he received a Wound in his Hand by fighting. If my Lord of *Warwick* thinks, that there is a difference between his being on *Mr. Coote*'s side, and theirs that were on the other side, he would have his Councel heard, how far it will differ his Guilt and the Nature of the Crime from what it was with them on the other side, I cannot think that can be to any great purpose to have that Argued; but if your Lordships please, you may hear his Councel what they have to say to that Matter, but otherwise I cannot think, but that his Lordship will acknowledge that the Matter of Fact, that he was engaged in the Quarrel.

E. of Peterb. My Lords, I desire, if this be a Point, that my Lord's Councel should be heard to that; it should be stated as a Point of Law, and then your Lordships will consider of it.

L. H. St. As well as I could apprehend it, as it was offered by my Lord *Warwick*, this was what he desired to have his Councel heard to: Tho' the Persons engaged in the Quarrel on the opposite Party to Mr. *Coote* have been tried, and found guilty of Manslaughter, yet he is not in equal degree of Guilt with them, he being engaged on Mr. *Coote*'s side, and therefore his Lordship's Case differs from theirs who fought against Mr. *Coote*. This Point he would have Argued by his Councel before your Lordships, as a Matter of Law founded upon the Fact; now the Fact of the Case must arise from the Evidence as it has been given, which has not yet been debated or settled by your Lordships, and till that be agreed to be the Case, no Question of Law does properly arise.

D. of Leeds. My Lords, if possible I would put this Matter into its true Method, for indeed I think we have been all this while out of the way. The Noble Lord at the Bar has desired to have his Councel heard, this House has allowed him Councel in Matters of Law, I would desire that the Councel would state the Case so to your Lordships, that it may appear to be a Case fit to be Argued, that so it may receive your Lordship's Judgment thereupon. My Lord's own bare proposing of such a thing, will not be enough to encline your Lordships to be of Opinion, perhaps, one way or other; but I would pray your Lordships, That you would direct the Councel that are assigned for my Noble Lord at the Bar, to propose to your Lordships as a Point of Law that he ought to insist upon; I think it is apparent to every body, that no Point of Law can arise but upon Matter of Fact, which is agreed to be Proved in any Case; now the Proofs of the Fact we have heard; now that which I would propose to your Lordships is, That instead of Hearing his Councel to Argue in Point of Fact what is not yet agreed upon to be the Fact, they should state such a Point of Law as they would Argue upon; and then whether you would think it a Point of Law, or not a Point of Law, we must go into another place, where it may be debated, whether it be such a Point of Law as that Councel should be heard to it.

E. of

E. of Peterb. My Lords, I hope you will forgive me for interposing in this Matter, but that which I have to say to it is this, I am far from giving any Opinion as yet, as to the matter of Fact, whether my Lord of *Warwick* was Mr. *Coote's* Friend or his Enemy; I know it is not a proper place for that Matter to be debated in, but my Noble Lord at the Bar desires to have his Councel heard, as upon that Point, as if the Fact were agreed, Truly till the Fact be agreed, I question whether we can give any Judgment or Opinion one way or other: if I observ'd aright, the Evidence for the King aimed at somewhat else, I shall not say what my Opinion now is, till we come to debate it among our selves; but here is a desire of having Councel heard, but there is no Question of Law stated, but it depends upon a matter of Fact, which is not yet determin'd by your Lordships, before whom the Consideration of both Fact and Law doth lye. Whether a Person that is engaged on the side of the Party that's kill'd in a Quarrel, where several Persons on both sides are concerned, be as much guilty as those that are concerned on the other side.

M. of Norm. My Lords, I do suppose that you may hear the Councel to state the Question, without your determining any thing upon it, as to your Opinion one way or other; for your hearing of Councel is only in order to prepare your Lordships for the Debate among your selves. If there remains any doubt with you, it seems my Noble Lord at the Bar has proposed that his Councel should be heard; If the Councel will state the Point to be Argued upon, your Lordships may here consider, whether it be such a one as it is fit to hear Councel to, then no doubt you will hear Councel to it. This I suppose you will hear from them, or otherwise your Lordships will not think fit to give your selves the trouble to go and Debate that which is no settled Question to be Debated of.

E. of Roch. My Lords, I am afraid of necessity you must Adjourn to your own House, for I find my Lords are here Arguing one with another; some are of Opinion that the Councel should state the Question, that they should be Heard upon; others of my Lords are of Opinion, that it is only a matter of Fact, not a Matter of Law, upon which Councel should be Heard; then it must be Debated between your Lordships, which is not proper for to do here, therefore I would Humbly move your Lordships, that you would Adjourn to your own House.

E. of Pet. I suppose your Lordships will be pleased to enquire of the Councel, whether they do insist upon this Point, or no.

L. H. St. My Lord *Warwick*, if your Lordship insist that your Councel should be heard upon the Point which you have offer'd, it seems there is such a difference of Opinion among my Lords, that for the Debating of what shall be done in the Case, my Lords must Adjourn; but if you do not insist upon it, they will go on in the ordinary Method, to consider of the Evidence that has been given, after it is summ'd up on both sides; for if you have no more Evidence to offer, you are to make your Observations upon the Evidence that has been given.

E. of War. My Lords, I submit it upon the whole Matter to your Lordships, whether my Councel can be heard, or not, to that Point; How far I being of Mr. *Coote's* side, can be guilty of his Death.

L. H. St. That is a matter of Fact which is not yet Determin'd, and therefore the Question which you suppose to arise upon it, is not yet ripe to be Resolved. If you have no other Witnesses to produce, that which remains, for I think I may properly acquaint you with the Methods of Proceeding, is that you are now on your part, to sum up the Evidence that has been given, which is your own work, as not being allow'd Councel as to Matter of Fact; you are at liberty to make such observations as you may think for your Advantage upon the Evidence, and so to close your Defence.

E. of War. My Lord, I submit it upon the whole Matter to your Lordships.

L. H. St.

L. H. St. Mr. Attorney-General, my Lord *Warwick* ſubmits the Matter, as it has been prov'd, to their Lordſhips, without any ſumming up of the Evidence; you who are of the King's Council, if you think fit, will Sum up the Evidence on yours, in order to their Lordſhips Conſideration of it: This you know is the time for doing it. Make Proclamation for Silence.

Cl. of the Cr. Sergeant at Arms, make Proclamation.

Serg. at Arms. O Yes, O Yes, O Yes, My Lord High Steward of *England*, his Grace does ſtrictly Charge and Command all manner of Perſons here preſent, to keep ſilence, upon pain of Impriſonment.

L. H. St. Gentlemen, you that are of the King's Council, now is your time to Sum up the Evidence for the King.

Then Mr. Solliciter began to Sum up the Evidence, but his Voice was ſo low, that he could not be heard by the Lords that ſate at the upper end of the Houſe.

D. of Leeds. My Lords, I think it of ſo great importance to have a true State of the Fact and Evidence laid before us, and that we may hear what the King's Council do ſay at the ſumming up of the Evidence, that if my Lords be of my Opinion, we ſhall be very defective to know what Judgment we give when we come to give Judgment, unleſs we are thoroughly apprized of the Matter of Fact and the Proofs: I confeſs I am going to move, that which is a Thing according to the Orders of the Houſe, much without the Rules of the Houſe. That the Council ſhould be heard in any other Place but where they are, at the Bar of the Houſe; This is contrary indeed, I acknowledge, to the Orders of the Houſe, and ſo my Motion is irregular; but yet, in order to our Satisfaction, that we might be enabled to hear what the King's Council do ſay to us, eſpecially in ſumming up the Evidence, I cannot but offer this to your Lordſhips; for we can no more hear the Council here, than if we were quite out of the Houſe: Whether therefore your Lordſhips will pleaſe to order, that any Perſon that has a ſtronger Voice ſhould Sum up the Evidence; Or whether you will diſpenſe with the Orders of the Houſe ſo far, as that Mr. Solliciter may come to the Clerk's Table, or ſome other Place within the Houſe, that he may be heard by all, I muſt ſubmit it to your Lordſhips. It would be a great Satisfaction for us to hear him, in order to our Judgment; but I acknowledge in this I do make an irregular Motion, as to the Orders that are uſually obſerved by your Lordſhips: But I know not how to help it, in regard without hearing, it is impoſſible for us to form our Judgment.

E. of Roth. My Lords, I have a very great reſpect for every Motion that that Noble Lord who ſpoke laſt does make, and I am of his Opinion, That it will mightily tend to the Satisfaction of my Lords who are to give their Judgment in this Caſe, to hear both the Evidence and the Council, and what Obſervations are made on both ſides; and that it is a great Diſadvantage that the Council ſhould have ſo low a Voice, that all my Lords ſhould not be able to hear him: but yet I hope that may be remedied ſome other way than what is propoſed by that Noble Lord; for if what he deſires were done, it will be obvious that in point of Preſident many Inconveniencies will incur upon breaking the Orders of the Houſe, to comply with a Motion which is acknowledged by the Noble Lord himſelf, to be irregular; for it would be impoſſible to hear any body, if it be permitted to make ſuch a great Noiſe without; and it is that which renders the Difficulty of hearing the greater. If that were quieted, your Lordſhips might hear this Gentleman as well as thoſe of the other Council: Or if this Gentleman's Voice will not ſo well reach your Hearing, then there are other Gentlemen of the King's Council that have ſtronger Voices; and if any of them would Sum up the Evidence, I believe it would be better heard, and conſequently better apprehended by your Lordſhips, for I had rather any Expedient ſhould be found out to comply with the Orders of the Houſe, and preſerve them, than that any irregular Thing ſhould be done for the breaking the Orders of the Houſe, upon any Account whatſoever.

L. H. St. Make another Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes! My Lord High-Steward of *England* his Grace does ſtraitly Charge and Command all manner of Perſons here preſent to keep Silence, upon pain of Impriſonment.

E. of Bridgewater. Truly, my Lords, The Noiſe about the Court is ſo great, that we who ſit much nearer to the Bar, than the Noble Lord who made the Motion for the removal of the Councel into another Place, cannot hear Mr. Sollicitor what he ſays, and therefore I think ſome of the Guard ſhould be ſent out to clear all the Paſſages about the Court, that there may be no Noiſe, for it is the Noiſe of the People without, that makes it ſo difficult to hear the King's Councel.

L. H. St. Let ſome of the Guard without take care that there be not that Noiſe made, and whoſoever does make a Noiſe, let him be taken into Cuſtody.

Then another Proclamation was made for Silence; upon which there was a greater Quietneſs in the Hall.

L. H. St. Mr. Sollicitor, There is hopes now ſince there is not ſo great Noiſe as there was, that you may be heard by my Lords: You muſt uſe the beſt Endeavours you can, that you may be heard.

E. of Roch. If that Gentleman cannot ſpeak out ſo well that he can be heard, thoſe of the King's Councel that have better Voices, muſt Sum up the Evidence.

Mr. Sol. Gen. My Lord, I ſpeak as loud as I can.

E. of Roch. There are others of the King's Councel, pray let them do it then; Mr. Attorney, he being nearer and within the Bar.

L. H. St. I know not whether Mr. Attorney be prepared for the Summing up of the Evidence, becauſe he Examined the Witneſſes, and the King's Councel uſually allot to themſelves the particular Parts, which they intend to take.

E. of Roch. Then let Mr. Sollicitor go on.

Mr. Sol. Gen. I would ſhortly obſerve to your Lordſhips, what Evidence hath been given to you on behalf of the King in this Caſe, againſt that Noble Lord the Priſoner at the Bar, for the Offence for which he ſtands Indicted. The firſt Witneſs that was produced was the Drawer at the *Greyhound* Tavern in the *Strand*, where this Quarrel, that was the occaſion of the Death of this Perſon that was ſlain, happn'd; and he tells you that that night there was at his Maſter's Houſe my Lord of *Warwick*, my Lord *Mohun*, Capt. *French*, Capt. *Coote* the Perſon that was kill'd, and Mr. *Dockwra*, and after they had been there ſome time that other Perſon that was the Sixth concerned in the Scuffle, Mr. *James*, was ſent for, and he came in when it was pretty late; there they continued till One or two a Clock, and then they came down to the Bar, and Order was given for to call Coaches, but it being ſo late, and *Sunday* morning, they could not find Coaches, and then there was Orders for the getting of Chairs; when ſome Chairs were brought, Mr. *Coote* and Mr. *French* went into two of the Chairs, but my Lord *Mohun* interpoſed, and ſaid there ſhould be nothing done that night, and that if they went away he would call for a File of Muſqueteers from the Guard, and ſecure them, and thereupon they came out of the Chairs, and went into the Houſe, and there was the Noiſe of Swords claſhing heard at the Bar; Capt. *Coote* ſaid he would Laugh when he pleas'd, and Frown when he pleas'd, and they parted; Three were on one ſide, and three on the other of the Bar, my Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote*, were on one ſide; Capt. *French*, Capt. *James*, and Mr. *Dockwra*, were on the other ſide: Indeed he ſays my Lord *Mohun* and my Lord *Warwick* did what they could to pacifie them, and threatned to ſend for the Guards, but away they went. The next Witneſs was *Thomas Browne*, and he was the Chairman that carried Mr. *Coote*, and he ſays, That there

was

was an Endeavour by my Lord of *Warwick*, and my Lord *Mohun*, to put off the Buſineſs at that time, and that they did what they could to have put it off, and that even after they were in their Chairs, when they were turned up St. *Martins-Lane*, there they ſtopt at the Back Door of the *Croſs-Keys* Tavern, and that while they ſtood there with their Three Chairs, Three other Chairs came by, and then Capt. *Coote* had them put up, and follow after thoſe Chairs as faſt as they could to *Leiceſter-fields*.

The next Witneſs is *William Crippes*, who was the other Chairman that carried Capt. *Coote*, and he gives your Lordſhips much the ſame Account that *Browne* gave before, and his Evidence was alſo to the ſame purpoſe, That my Lord of *Warwick* and my Lord *Mohun* endeavoured to pacifie the Matter, and that there ſhould be an end of the Buſineſs for that night, and let it alone till another time, and that my Lord *Mohun* threatn'd to ſend for the Guards, and ſecure them, and would have had them gone home, that is, Mr. *Coote* either with him to his Lodging, or he would go to Mr. *Coote*'s, but he could not prevail: Then my Lord *Mohun* ſaid, If he would go on, his Lordſhip would go and ſee an end of the Buſineſs.

The next Witneſs was one *Grattle*, who was one of the Chairmen that carried my Lord of *Warwick*; and he ſays, That my Lord *Mohun* and my Lord of *Warwick* did endeavour what they could to put off the Matter till the next morning, but that they could not prevail; That afterwards, when he carried my Lord from *Leiceſter-fields* to the *Bagnio*, my Lord borrowed a Handkerchief of him to wrap his Hand in, for he ſaid he was wounded, but by whom that Wound was given does not appear, nor how he came by that Wound any otherways then as his Lordſhip himſelf ſays, that it was given him by Mr. *James*.

The next was the other Chairman that carried my Lord of *Warwick*, which was *John Gibſon*, and his Teſtimony need not be repeated, becauſe it did not differ from the others. The next Witneſs was *Robert Applegate*, who was the Chairman that carried my Lord *Mohun*, and he ſays, That there was an Endeavour uſed by my Lord upon his ſetting down in St. *Martins-Lane*, to quiet Capt. *Coote*, and prevent any Quarrel at that time, but he ſays, when they would go on, my Lord *Mohun* ſaid he would go and ſee the end of it, and thereupon they went on towards *Leiceſter-fields* to the end of *Green-ſtreet*, which is at the lower end of the Square.

The next Witneſs was *Palmer*, who was one of the Chairmen that carried Mr. *French* to the *Bagnio* in *Longacre*, and he tells your Lordſhips what happen'd upon his carrying of him thither, how immediately after his coming there my Lord of *Warwick* came thither, and they knock'd at the Door the ſame time, and that Capt. *French* was very much wounded, and they went into the Houſe together, and that *French* would have had them pull off his Cloaths to ſee his Wounds, for he believed he was a dead Man.

The next Witneſs was the Chairman which carried Mr. *James*, and he only tells your Lordſhips, That he carried a Gentleman into *Leiceſter-fields*, that my Lord *Mohun* endeavoured to have put off the Buſineſs for that night, but who the Perſon was that he carried, he cannot ſo well tell, nor give an account of; but when he had ſet him down at the further end of the Square, there he left him, and he knows no farther.

Then there was the Surgeon at the *Bagnio* in *Longacre*, who gives your Lordſhips an account, That about Two of the Clock in the morning on the *Sunday*, my Lord of *Warwick* and Capt. *French* came in there, Capt. *French* was wounded in the Body, and my Lord *Warwick* was wounded in the Hand, and my Lord *Warwick* did take extraordinary Care of Capt. *French*, and would not have the Door open'd to any body, nor his Lordſhip known to be there; That afterwards Capt. *James* and Mr. *Dockwra* came to the Door, and my Lord came to the Door himſelf, and when he ſaw who they were, he ordered them

to

to be let in, and that there was a Discourse about going into the Country, and that there was a fear that *Coote* was kill'd. This is the Effect of the Testimony both of the Surgeon and his Servants; and this to be observed, That when Capt. *French* came in, his Sword was not bloody, that my Lord of *Warwick*'s Sword was bloody almost all over, and that was taken notice of the next day; and there are several Witnesses both Men and Women of that House that give your Lordships an account much to the same purpose; Then there was Capt. *Duckinfield*, who says, That my Lord *Warwick* came to his Lodgings, and they went in a Coach together to the Tavern in *Cornhill*, and then there was a Discourse of going into the Country, and my Lord said, That he was afraid his Friend Mr. *Coote* was kill'd, but they had no absolute News of his being kill'd at that time, for it should seem my Lord of *Warwick* forsook the Field as soon as the Fatal Stroke was given, which by whom given it was, is left to your Lordship's Consideration: Indeed it is pretended by my Lord, that the Wound that he had in his Hand was given him by Mr. *James*, but nothing of that is made apparent to your Lordships upon the Proofs.

Then we came to give your Lordships an account of the nature of the Wounds that Mr. *Coote* had in his Body, and for that we produced both the Surgeon that did probe the Wounds by the Order of the Coroner, and the Coroner himself; Indeed we could not get a positive answer from either the Surgeon or the Coroner, whether the Wounds were given by one and the same Sword, or by different Swords, but then your Lordships have the Testimony of Mr. *Turner*, who was Capt. *Coote*'s Servant, and who knows his Master's Sword, and it hath been shewn to him, and he says that is his Master's Sword that he went out with, and it can be easily judged whether he could give himself those Wounds by that Sword.

And your Lordships have likewise had brought before you another Sword, which was left at the *Bagnio* in *Longacre*, that was Capt. *French*'s, that had no Blood at all upon it, but my Lord of *Warwick*'s, it seems by all the Evidence had a great deal of Blood upon it.

Then came the Witnesses for the Prisoner at the Bar, this Noble Lord, my Lord *Warwick*, and the Sum of the Testimonies that they have given is of a great deal of Kindness between my Lord *Warwick* and Capt. *Coote*; That my Lord lent him a Hundred Guinea's to purchase his Commission in the Guards, and he had but Three of Four hundred Guinea's which was necessary to make the Purchase, and there are several of them that do Testifie, that they always look't upon Capt. *Coote* and my Lord of *Warwick* to be very good Friends, and that there never was any Quarrel between them; and that is the Sum of what the Evidence on that side did Testifie. And this, my Lords, I take to be the Sum of the Evidence that has been given on either side, and when I have laid it thus before your Lordships, I must submit it to your Lordships Judgment what Opinion you will be of upon the whole Matter; only there is this one Observation that I would make to your Lordships upon this Evidence, That there is not one Witness that has given you an Account satisfactory by whose Hand these Wounds were given to Mr. *Coote*; and therefore, tho it is apparent my Lord of *Warwick* was in the place, where the Mortal Wound was given, yet by whose Hand it was given, is not known; until that can be known every Person that was there must remain under the Imputation of the same Guilt, as having a Hand, and contributing to his Death: it is certain, and cannot be denied, that this Noble Lord, my Lord at the Bar, was in the Field, wherein there was actual Fighting; for he does not deny it himself, but says, that he was engaged particularly with Capt. *James*, when Capt. *Coote* was engaged with Capt. *French*, between whom, as it is alledged, the Quarrel was; but that is no way in Point of Fact made appear to your Lordships, and there being such Suspicions and Circumstances of the Blood upon my Lord of *Warwick*'s Sword, and the great Concern that he was in when he came to the *Bagnio*, and desiring to be con-

concealed, and that no body ſhould know that he was there, and the Care he took of Mr. *French*, who is the pretended Perſon that did the Fact, is that which is to be ſubmitted to your Lordſhips; and it is to be obſerved, that Mr. *French*'s Sword was not Bloody, but only Dirty, but my Lord of *Warwick*'s Sword was very Bloody from the Hilt to the Point, and he was in a great Conſternation when he came into the Houſe.

There is likewiſe a Circumſtance which your Lordſhips will pleaſe to obſerve, that even Mr. *Coote*'s Sword was brought into the Houſe by ſome of the Company that were there, and whatſoever this Noble Lord pretends of his Friendſhip to Mr. *Coote*, yet, it ſeems by his Care that he took of Capt. *French*, he had as much Friendſhip for him.

There is another Circumſtance that has been Teſtified, which it will be fit for your Lordſhips to take into Conſideration, and make ſome Obſervation of; That is the nature of the Wound; It ſeems he had two Wounds, one on the left ſide of the Breaſt, near the Collar Bone, and that was downward, and yet his Man, that was here produced as a Witneſs, does Teſtifie, that he was one that uſed his Right Hand, and then it is a wonder that he ſhould receive ſuch a ſort of a Wound in that part; and the other Wound was on the left ſide too, but it was upward, and how that could be given by one that was a Right Handed Man, is certainly a very great Wonder; and the Wounds being both given upon the ſame ſide, it cannot but be concluded, that they were given by one and the ſame Sword.

Another Circumſtance which relates to my Lord of *Warwick* is, that when he came into the *Bagnio* after the Fact was over, he would have himſelf denied to be there, and went to the Door when *James* and *Dockwra* came in, and his declaring his deſire of going into the Country; Theſe, we ſay, are Circumſtances that do induce a Doubt, That my Lord of *Warwick* had a Concern upon him of great Guilt of having a Hand in this Man's Death: It is indeed pretended by my Lord of *Warwick*, That Mr. *Coote* was a Perſon that my Lord of *Warwick* had a Kindneſs for, but it is plain by the Evidence, that he left him dead in the Field, and did not take any Care of him, but took a great deal of Care of Capt. *French*, who, it is pretended, was the Perſon that fought with *Coote*, when he came to the *Bagnio*, and there is nothing of Kindneſs at this time pretended, nor any thing of a Defence to this Matter offer'd by my Lord of *Warwick*, but only what the Chairmen ſay, that he endeavoured to put it off to another time. Theſe, my Lords, are all the Obſervations that I ſhall make upon the Evidence in this Caſe; How far this Evidence, upon Conſideration, will weigh with your Lordſhips, I muſt ſubmit it to you. If my Lord of *Warwick* did do the Fact, as theſe Circumſtances, we think, may incline your Lordſhips to believe he did, it will ſurely be Murder; but how far the Evidence comes up to the Proof of that, we muſt humbly ſubmit to your Lordſhips, who are the Judges of it; and we leave it intirely to your Conſideration upon what you have heard.

L. H. St. Then it ſeems you have done on all ſides.

Counſel. Yes, my Lords.

Lords. Then Adjourn, Adjourn.

L. H. St. Is it your Lordſhip's pleaſure to Adjourn into the Houſe of Lords?

Lords. Ay, Ay.

L. H. St. This Houſe is Adjourned into the Houſe of Lords.

Then the Lords went back to their own House in the same Order they came into the Court in *Westminster-Hall*, and Debated the Matter among themselves, what Judgment to give upon the Evidence that had been heard, and in about Two Hours time they returned again into the Court, erected upon the Scaffold in *Westminster-Hall*; and after they were Seated in their Places, the Lord High Steward being Seated in his Chair before the Throne, spoke to the Lords thus;

L. H. St. Will your Lordships proceed to give your Judgment?

Lords, Ay, Ay.

L. H. St. Your Lordships will give me leave, as I ask your Lordships your several Opinions, to take so much time as to write down the Opinion of every Lord.

Lords, Ay, Ay.

Then the *Lord High Steward* asked this Question of every one of the Lords there present, beginning with the Puisne Baron, which was the Lord *Bernard*.

L. H. St. My Lord *Bernard*, Is *Edward* Earl of *Warwick* Guilty of the Felony and Murder whereof he stands Indicted, or Not Guilty?

The Lord Bernard *stood up in his Place uncovered, and laying his Right Hand upon his Breast, Pronounced his Judgment thus,*

L. Bernard. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

The same Question was asked severally of all the Lords, who in the same Form delivered their Opinions, as followeth,

L. Haversham, Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Herbert of Cherbury, Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Weston. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Ashburnham. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Cholmley. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Jeffreys. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Godolphin. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Guilford. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Ofeistone. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Osborne. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Craven. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Cornwallis. Not Guilty of Murder, but Guilty of Manslaughter upon my Honour.
L. Granville. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Berkly. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Laxington. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Rockingham. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Lucas. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Culpeper. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Vaughan. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Byron. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Jermyn. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Leigh. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Raby. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Howard of Escrick. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Lovelace. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Hunsdon. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. North and Grey. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Wharton. Not Guilty of Murder, butGuilty of Manslaughter, upon my Honour.
L. Eure. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Willoughby of Parham, Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Dudley. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Ferres. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Willoughby of Eresby, Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Audley. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.
L. Abergaveny. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

L. H. Steward.

L. H. Steward. My Lord Viſcount *Lonſdale*, Is *Edward* Earl of *Warwick* Guilty, &c.

L. Viſcount Lonſdale, Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
L. Viſcount Longueville. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
L. Viſcount Townſend. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

L. H. Steward. The Earl of *Grantham*, Is *Edward* Earl of *Warwick* Guilty, &c.

E. of Grantham. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Albemarle. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Tankerville. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Warrington. Not Guilty of Murther, but Guilty of Manſlaughter, upon my Honour.
E. of Scarborough. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Torrington. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Marlborough. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Mountague. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Portland. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Rocheſter. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Nottingham. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Yarmouth. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Radnor. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Macclesfield. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Feverſham. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Bowlington. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Carliſle. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Bath. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Angleſey. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Eſſex. Not Guilty of Murder, but Guilty of Manſlaughter upon my Honour.
E. of Scarſdale. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Thanet. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Cheſterfield. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Carnarvan. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Kingſton. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Winchelſea. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Stamford. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Peterborow. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. Rivers. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Manchester. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Denbigh. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Leiceſter. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Bridgwater. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Dorſet and Middleſex. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Suffolk. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Huntington. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Darby. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Kent. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
E. of Oxford. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

L. High Steward. My Lord Great Chamberlain, Is *Edward* Earl of *Warwick* Guilty, &c.

E. of Lindſey. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

L. H. Steward. My Lord Marquis of *Normanby*, Is *Edward* Earl of *Warwick* Guilty, &c.

L. Marquis of Normanby. Not Guilty of Murder, but Guilty of Manſlaughter upon my Honour.
L. Marquis of Halifax. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

L. H. Steward. My Lord Duke of *Newcaſtle*, Is *Edward* Earl of *Warwick* Guilty, &c.

D. of Newcaſtle. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
D. of Scomberg. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
D. of St. Albans. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
D. of Northumberland. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
D. of Ormond. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
D. of Southampton. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
D. of Richmond. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
D. of Somerſet. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.
D. of Devonſhire. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

L. High Steward. My Lord Preſident, Is *Edward* Earl of *Warwick* Guilty, &c.

D. of Leeds. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

L. High Steward. My Judgment is, That my Lord of *Warwick* is not Guilty of the Murder, but is Guilty of Manſlaughter, upon my Honour.

Then

Then the Lord High-Steward reckoned up the Number of the Peers that were there preſent, and the Opinions that were given, and afterwards acquainted their Lordſhips with the Reſolution that they came to, in this manner.

L. H. St. My Lords, Your Lordſhips are Ninety three in Number here preſent, and you have all acquitted my Lord of *Warwick* of the Murder whereof he ſtands Indicted, but you are of Opinion, that he is Guilty of Manſlaughter; Is it your Pleaſure, that he ſhould be called to the Bar, and acquainted with your Lordſhips Judgment?

Lords. Ay, Ay.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes! Chief Governor of the Tower of *London*, bring forth the Body of your Priſoner *Edward* Earl of *Warwick* forthwith, upon Pain and Peril will fall thereon.

Then the Earl of Warwick *was brought to the Bar.*

L. H. St. My Lord of *Warwick*, your Lordſhip has been Arraigned upon an Indictment for the Killing Mr. *Coote*, you have pleaded Not-Guilty, and put your ſelf upon your Tryal by your Peers here preſent; my Lords have heard the Evidence given both againſt you and for you, and have conſidered of it, and are come to a Reſolution, and their Judgment is, That your Lordſhip is not Guilty of the Murder whereof you ſtand Indicted, but that you are Guilty of Manſlaughter; What has your Lordſhip to ſay, why Judgment of Death ſhould not be pronounced againſt you according to the Law?

E. of Warw. My Lords, I deſire that the Benefit of my Peerage may be allowed me, according to the Statute of *Edward* the Sixth.

L. H. St. My Lord, your Lordſhip has demanded the Benefit of your Peerage upon the Statute of *Edward* the 6th, and you muſt have it by Law; but I am directed by their Lordſhips to acquaint you, That you cannot have the Benefit of that Statute twice, therefore I am likewiſe directed by their Lordſhips to ſay, That they hope you will take a more than ordinary Care of your Behaviour for the future, that ſo you may never hereafter fall into ſuch unfortunate Circumſtances as you have been now under; my Lords hope this will be ſo ſenſible a Warning, that nothing of this kind will ever happen to you again; your Lordſhip is now to be Diſcharged.

L. H. St. Is it your Lordſhips pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, Ay.

L. H. St. This Houſe is Adjourned to the Houſe of Lords.

Then the Lords went in Proceſſion, in the ſame Order that they came into the Court.

FINIS.

THE TRYAL OF Charles Lord Mohun.

Die Mercurii 29 Martii, 1699.

ABout One of the Clock, the Lords came in the ſame Order as the day before to the Tryal of the Earl of *Warwick*, into the Court erected in *Weſtminſter-Hall.*

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes, My Lord High Steward, his Grace, does Strictly Charge and Command all manner of Perſons here preſent, to keep Silence upon Pain of Impriſonment.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Perſons who are obliged to give their Attendance here this day, before his Grace, my Lord High Steward of *England*, let them give their Attendance forthwith.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, His Grace my Lord High Steward of *England* does Straitly Charge and Command all manner of Perſons here preſent to be Uncovered.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, Chief Governor of the Tower of *London*, bring forth the Body of your Priſoner *Charles* Lord *Mohun* forthwith, upon Pain and Peril will fall thereon.

Then my Lord Mohun *was brought to the Bar.*

Lord High Steward. My Lord *Mohun*, your Lordſhip is now brought upon your Tryal for the Murder of Mr. *Coot*, for which you ſtand In-

dicted by the Grand Jury for the County of *Middleſex*. The King, who knows that Juſtice is one of the Pillars which ſupports a Throne, will have a ſtrict Account taken of the Blood of any of his Subjects, without Reſpect to the Quality of the Slain, or of the Perſon who ſtands Charged with his Death. There is not one of the Noble Peers here preſent, who are to be your Tryers, but does heartily wiſh your Lordſhip Innocent; But, on the other ſide, if you ſhould appear to be Guilty upon the Evidence, you ought not to hope that any Conſideration of Relation, Friendſhip, or Pity, will prevail againſt Juſtice. And therefore ſince in your preſent Condition every thing that is valuable in this World is at ſtake, it will be highly neceſſary for your Lordſhip to recollect your ſelf, and to have your beſt Thoughts about you. Facts of this Nature are frequently attended with ſuch unhappy Circumſtances, that a Noble Perſon may be juſtly covered with Shame to have Faults and Weakneſſes expoſed to ſuch an Aſſembly as this, altho he be not Conſcious to himſelf of the Guilt of Blood: But your Lordſhip ought not to be ſo far diſcompoſed with any Thoughts of this Kind, as to neglect your Defence againſt this heavy Accuſation of Murder. In order to this, it is neceſſary for your Lordſhip to hear with Temper what will be ſaid againſt you, and by no Means to Interrupt the Councel or Witneſſes. I will take Care to give your Lordſhip notice when the proper time comes for you to make your Obſervations upon the Evidence, to Examine your Witneſſes, and to ſay what you think proper for your own Defence; And when my Lords have heard, and fully and maturely Conſidered the whole Matter, their Lordſhips will give ſuch a Judgment as the Law and Juſtice require.

L. H. St. Read the Indictment to my Lord.

Clerk of the Crown. CHarles *Lord* Mohun, *your Lordſhip Stands Indicted in the County of* Middleſex, *by the Name of* Charles *Lord* Mohun *of* Oakehampton *in the County of* Devon, *late of the Pariſh of St.* Martin in the Fields *in the County of* Middleſex, *together with* Edward *Earl of* Warwick *and* Holland, *late of the ſame Pariſh and County*, Richard French, *late of the ſame Pariſh and County, Gent.* Roger James, *late of the ſame Pariſh and County, Gent. and* George Dockwra, *late of the ſame Pariſh and County, Gent. not having the Fear of God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil the* 30*th day of* October, *in the Tenth Year of the Reign of our Soverein Lord that now is*, William *the Third, by the Grace of God of* England, Scotland, France, *and* Ireland, *King, Defender of the Faith*, &c. *with Force and Arms*, &c. *at the Pariſh aforeſaid, in the County of* Middleſex *aforeſaid, in and upon one* Richard Coote *Eſq; in the Peace of God, and of our ſaid Sovereign Lord the King that now is, then and there being Felonioufly, Wilfully, and of your Malice afore-thougtht, did make an Aſſault, and that the aforeſaid* Edward *Earl of* Warwick *and* Holland, *with a certain Sword made of Iron and Steel of the value of* 5 s. *which he the ſaid* Edward *Earl of* Warwick *and* Holland, *in his Right Hand then and there had and held drawn, the aforeſaid* Richard Coote *in and upon the left part of the Breaſt of him the ſaid* Richard Coote, *near the Collar Bone of him the ſaid* Richad Coote, *then and there Felonioufly, Voluntarily, and of his Malice afore-thought, did Strike, Stab, and Thruſt in, giving to the ſaid* Richard Coote, *then and there with the drawn Sword aforeſaid, in and upon the left part of the Breaſt of him*

the

the ſaid Richard Coote, *near the Collar Bone of him the ſaid* Richard Coote, *one Mortal Wound of the breadth of half an Inch, and of the depth of* 5 *Inches, of which ſaid Mortal Wound he the aforeſaid* Richard Coote *then and there inſtantly died*; *And that you the ſaid Lord* Mohun, *together with the ſaid* Richard French, Roger James, *and* George Dockwra, *then and there Feloniouſly, Wilfully, and of your Malice afore-thought, were preſent, aiding, abetting, comforting, aſſiſting, and maintaining the ſaid* Edward *Earl of* Warwick *and* Holland, *the ſaid* Richard Coote, *in manner and form aforeſaid, Feloniouſly, Wilfully, and of his Malice afore-thought, to Kill and Murder, and ſo the ſaid* Edward *Earl of* Warwick *and* Holland, *and you the ſaid* Charles *Lord* Mohun, Richard French, Roger James, *and* George Dockwra, *the aforeſaid* Richard Coote, *in manner and form aforeſaid, Feloniouſly, Wilfully, and of your Malice afore-thought, did Kill and Murder, againſt the Peace of our Sovereign Lord the King, that now is, His Crown and Dignity.* How ſay you, *Charles* Lord *Mohun*, are you Guilty of this Felony and Murder, whereof you ſtand Indicted, or Not Guilty?

Lord Mohun. Not Guilty.

Cl. of the Crown. Culprit, How will you be Tryed?

L. Mohun. By God and my Peers.

Cl. of the Crown. God ſend your Lordſhip good Deliverance.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Perſons that will give Evidence on behalf of our Sovereign Lord the King, againſt *Charles* Lord *Mohun*, the Priſoner at the Bar, let them come forth and give their Evidence, for now he ſtands at the Bar for his Deliverance.

L. Mohun. My Lords, I deſire I may have the Benefit of Pen, Ink, and Paper.

L. H. St. Your Lordſhips are pleaſed to permit my Lord *Mohun* to have Pen, Ink, and Paper?

Lords. Ay, Ay.

Pen Ink, and Paper were carried to my Lord, by one of the Clerks of the Houſe.

Mr. Cooper. May it pleaſe your Lordſhips, my Lord *Mohun*, the Priſoner at the Bar, ſtands Indicted by the Grand Jury of the County of *Middleſex* before Commiſſioners of *Oyer* and *Terminer* in that County; and the Indictment ſets forth, That *Edward* Earl of *Warwick* and *Holland*, *Charles* Lord *Mohun*, Baron *Mohun* of *Okehampton* in the County of *Devon*, *Richard French*, *Roger James*, and *George Dockwra*, the 30th of *October*, in the Tenth Year of His Majeſty's Reign, with Force and Arms, at the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, upon one *Richard Coote* Eſq; Feloniouſly, Wilfully, and of their Malice afore-thought, did make an Aſſault, and that the ſaid *Edward* Earl of *Warwick* and *Holland*, with a drawn Sword then in his Right Hand, the ſaid *Richard Coote*, upon the left part of his Breaſt near the Collar Bone, did Strike, Stab, and Thruſt, giving him thereby a Mortal Wound of the breadth of half an Inch, and the depth of 5 Inches, of which Wound he inſtantly died; That my Lord *Mohun*, Mr. *French*, Mr. *James*, and Mr. *Dockwra*, Feloniouſly, Wilfully, and of their Malice afore-thought, were preſent, aiding, and abetting my Lord of *Warwick* and *Holland*, the ſaid *Richard Coote*, in manner aforeſaid, to Kill and Murder; And then concludes, ſo that the Earl of *Warwick* and *Holland*, the ſaid Lord *Mohun*, *Richard French*,

Roger

Roger James, and *George Dockwra*, the ſaid *Richard Coote*, in manner and form aforeſaid, Felonioufly, Wilfully, and of their Malice afore-thought, did Kill and Murder, againſt the Peace of the King, his Crown and Dignity. To this Indictment my Lord *Mohun* has pleaded Not Guilty, and for his Tryal has put himſelf upon God and your Lordſhips, his Peers. We ſhall call our Witneſſes, and produce what Evidence we have to give to prove my Lord *Mohun* Guilty, and ſo ſubmit it to you.

Mr. Attor. Gen. My Lords, This Noble Lord, my Lord *Mohun*, the Priſoner at the Bar, ſtands Indicted for the Death of Mr. *Coote*, one of the King's Subjects, as your Lordſhips have heard in the Caſe that was before you yeſterday, to which Indictment he had Pleaded Not Guilty, and for his Tryal has put himſelf upon my Lords who are his Peers; I ſhall very ſhortly open the Subſtance of the Evidence that we ſhall offer for the King againſt my Lord, the Priſoner at the Bar; We ſhall produce Evidence to prove, That at the time laid in the Indictment, the 29th of *October* at night, and the next morning, which was *Sunday*, my Lord, the Priſoner at the Bar, and my Lord of *Warwick*, (who has been found Guilty of Manſlaughter upon this Indictment before your Lordſhips) and thoſe other Perſons that are named in the Indictment, Capt. *French*, Capt. *James*, and Mr. *Dockwra*, and the Gentleman that was kill'd, happen'd to be at the *Greyhound* Tavern in the *Strand*, which was then kept by Mr. *Lockett*, and continued there a great part of the night, indeed till the next morning, about One or two of the Clock in the morning; There was my Lord of *Warwick*, my Lord *Mohun*, Capt. *French*, Capt. *Coote*, and Mr. *Dockwra*, but very late in the night the other Gentleman, Mr. *James*, was ſent for; A Meſſenger was ſent particularly to have him come to them; There they continued Drinking till about One or two of the Clock in the morning, then Coaches were ſent for; then the Drawer of the Houſe will acquaint your Lordſhips, that he went for them, and could not get any at that time, being a very dark night; and when there could be no Coaches had, then there were Chairs called for, and the Drawer went to call Chairs; and, as we ſhall make it appear to your Lordſhips, when the Drawer came back, there did appear to be a Quarrel among them, for there was claſhing of Swords, and they ſeem'd to be divided into Two Parties, on the one ſide were my Lord of *Warwick*, my Lord *Mohun*, the Priſoner at the Bar, and Mr. *Coote*; On the other ſide were Capt. *French*, Capt. *James*, and Mr. *Dockwra*; and firſt there were two Chairs came to the Door, into which Mr. *French* and Mr. *Coote* went, and when they were in the Chairs my Lord *Mohun* came out, and ſaid he would kill any of the Chairmen that went away, and ſo they put up again, and the Gentlemen came out, and came into the Houſe, but afterwards Mr. *Coote* went into the firſt Chair, and my Lord of *Warwick* into the next, and my Lord *Mohun* into the third, and then they went away; and the other Three Gentlemen went into the other three Chairs, and followed them. Your Lordſhips will hear whither they were all carried; When they came to the End of St. *Martins-Lane* in the *Strand*, my Lord *Mohun* would indeed have endeavoured to have perſwaded Mr. *Coote* in particular to have gone home for that night, and let the Buſineſs alone till another time, but Mr. *Coote* would go on; and while the 3 Chairs that carried my Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coote* to St. *Martins-Lane* End, which were the 3 firſt Chairs that went away from *Lockett's*, the other 3 Chairs that went after them overtook them, and then by

Mr.

Mr. *Coote*'s Command, the Chairmen that carried him went forward towards *Leiceſter-fields*, and then this Noble Lord, my Lord *Mohun*, did ſay, If you do go on, I will go and ſee the End of it, and ordered the Chairmen that carried him to go after thoſe Chairs in which my Lord of *Warwick* and Mr. *Coote* went, and accordingly they did go till they came to the hither end of the Square in *Leiceſter-fields* near *Greenſtreet* End, where my Lord *Mohun* got out of his Chair, paid for all the 3 Chairs 3 *s.* But we ſhall not be able to give to your Lordſhips an Account particularly as to my Lord *Mohun*, what he did afterwards, but we ſhall call our Witneſſes to prove what we have opened, and when our Witneſſes are heard, we ſhall leave the Matter to your Lordſhips Judgment.

Samuel Cawthorne, *which was the Drawer at the Tavern at* Lockett's, *was Sworn, and gave his Evidence to the ſame Effect that he did the day before.*

Mr. At. Gen. Pray, Will you acquaint my Lords who were at your Houſe the 29th and 30th of *October* laſt, *Saturday* night and *Sunday* morning?

Sam. Cawthorne. There were my Lord of *Warwick*, my Lord *Mohun*, Capt. *Coote*, Capt. *French*, Mr. *Dockwra*, and Mr. *James*.

Mr. At. Gen. How long did they continue there?

Cawthorne. Till between One and two of the Clock in the Morning.

Mr. At. Gen. Pray, Will you acquaint my Lords what happened at your Maſter's Houſe at that time; you remember what Evidence you gave yeſterday; Tell the whole Matter again, becauſe it relates to another Noble Lord that is now at the Bar.

Cawthorne. The Reckoning was call'd for about that time, and I went up and took the Reckoning, and all the Gentlemen came down to the Bar, and Coaches were ſent for; I went for them, but no Coaches could be had; Then Chairs were ſent for, and I called for Chairs, and there came Two Chairs to the Door, and into thoſe Two Chairs went Capt. *Coote*, and Capt. *French*, and my Lord *Mohun* and my Lord of *Warwick* endeavour'd to quiet them, and to put off the Buſineſs till another day, and thereupon they came out of the Chairs, and came into the Houſe again; My Lord *Mohun* did deſire there might be no Quarrel, and would have Mr. *Coote* go home with him to his Lodgings at *Weſtminſter*, or he would go with Mr. *Coote*, and ſaid there ſhould be no Quarrel that night: There were then 3 of them of one ſide of the Bar, and 3 of the other ſide, and their Swords were all drawn: My Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coote*, were of one ſide, and Capt. *French*, Capt. *James*, and Mr. *Dockwra*, were of the other ſide; I was without the Houſe when their Swords were firſt drawn, but I heard my Lord *Mohun* ſay, I have got a cut Finger by endeavouring to part them, and at firſt when the Chairs came on, my Lord *Mohun* ſaid, If they did Quarrel he would ſend to the Guards for a File of Muſqueteers, and ſecure them, ſo that he did what he could to prevent any Quarrel at all; and when he had received the Wound in his Hand, I help'd him to a Napkin to wrap his Hand in upon the Bleeding of it; Then my Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote*, went away in 3 Chairs, and my Lord *Mohun* gave Order to go down to *Weſtminſter*; and there were 3 Chairs called for by the other 3 Perſons, two did come, and Capt. *French* and Capt. *James* went

away in them, and the 6th not being come, they ſtay'd till it did come, and then they 3 went away too; The Chairs were all order'd to go home with them; My Lord of *Warwick*, and my Lord *Mohun*, gave Order to their Chairs to keep cloſe with Mr. *Coote*; and the other 3 Chairs immediately follow'd.

Mr. At. Gen. Pray, Will you conſider, and recollect with your ſelf, Was Mr. *James* there at firſt?

Cawthorne. No, I was ſent for him about Ten a Clock at night, and there he continued with them till they went all away in the 6 Chairs, and he was almoſt Fuddled when he came in.

Mr. At. Gen. When *James* came in, Was his Sword drawn?

Cawthorne. His Sword was in the Scabbard, but the Scabbard was broken, and he took and broke his Sword ſtamping upon it.

Mr. At. Gen. Pray, can you tell, you being up and down in the Room, what was the occaſion of the Quarrel?

Cawthorne. Indeed I can't tell, but ſome Words paſt when they were below ſtairs by the Bar from Capt. *French*, That he would Laugh when he pleas'd, and Frown when he pleas'd; and Mr. *Dockwra* did ſay, That they would fight them when-ever they pleas'd when they went away, but I did not obſerve that there was any Quarrel between them while they were above, nor any Swords drawn till after I came from calling the Chairs.

Mr. At. Gen. Were all the Swords drawn at once?

Cawthorne. They were all drawn when I came in from calling for the Coaches and the Chairs, and 3 were within the Bar, and 3 were without; They were putting up their Swords when I came in again; Indeed I do not know any thing of the Quarrel.

L. H. St. My Lord *Mohun*, Will you ask this Witneſs any Queſtions?

L. Mohun. Indeed I think I need not ask him any Queſtion, but yet, if your Lordſhips pleaſe, I would ask him this, Whether directly or indirectly I was any ways concerned in the Quarrel? Or, Whether I did not endeavour all that ever I could to quiet 'em.

Cawthorne. Yes, indeed, my Lord *Mohun* did endeavour all that ever he could to prevent any Quarrel at that time.

L. Mohun. Did I ſay any thing tending to the promoting of a Quarrel or Fighting among them?

Cawthorne. No, my Lord *Mohun* did not promote any thing of the Quarrel between 'em, but he did ſay 2 or 3 times that he would ſend for the Guards to ſecure them, and keep them from Fighting, both at the Door of the Houſe, and at the Bar, and ask't for a Napkin to wrap up his Hand in for the Wound which he ſaid he got in endeavouring to quiet and part them, and prevent their fighting.

L. Mohun. That is all that I would ask him, whether I did not endeavour all I could to prevent any Quarrelling or Fighting at that time.

Cawthorne. Yes, indeed, my Lord did ſo.

L. H. St. He has ſaid ſo already, my Lord, and therefore there does not need any further Examination of him to that Point: If both ſides have done with this Witneſs, let him go down. [*Which he did.*

L. H. St. Then Mr. Attorney, Who is your next Witneſs?

Mr. At. Gen. Our next Witneſs is *Thomas Browne*, who was one of the Chairmen that carried Mr. *Coote* into *Leiceſter-fields*. [*Then he was Sworn.*

L. H. St. What is the Queſtion you would ask him, Mr. Attorney?

Mr. At. Gen. My Lords, I deſire he may be Ask't and Examined, and acquaint

acquaint your Lordſhips, who it was that he carried from *Lockett's* the 29th of *October* laſt to *Leiceſter-fields*, and what time it was of the night?

Browne. I carried Mr. *Coote* in my Chair.

Mr. At. Gen. Whither were you directed to carry him?

Browne. To *Leiceſter-fields.*

M. At. Gen. What time of night was it?

Browne. It was 3 quarters paſt One, as near as I could gueſs.

Mr. At. Gen. Pray, What other Chairs were there that went along with you?

Browne. There were Two other Chairs.

Mr. At. Gen. Who were in thoſe Chairs, pray?

Browne. There were my Lord of *Warwick* in one, and my Lord *Mohun* in the other.

Mr. At. Gen. Did you 3 go away from *Lockett's* together?

Browne. Yes, we did, and when we were bid to take up, we went to the end of St. *Martins-Lane*, and turning up at the end of St. *Martins-Lane*, there my Lord of *Warwick* and my Lord *Mohun* called out to Capt. *Coote* to ſtay, and to turn down to go to *Weſtminſter*, but Mr. *Coote* would turn up the Lane, and my Lord of *Warwick* and my Lord *Mohun* made a ſtop at the Back Door of the *Croſs-Keys* Tavern, and both of them perſwaded Mr. *Coote* to put it off till the next morning, but he would not, he ſaid he would make an end of it that night.

M. At. Gen. Pray, recollect your ſelf, Did they name among them what their Buſineſs was that they would make an end of?

Browne. No, they did not.

Mr. At. Gen. Who was it that ſtopt at St. *Martins-Lane* End?

Browne. When we were turning up at St. *Martins-Lane* End, my Lord of *Warwick* and my Lord *Mohun* call'd out to ſtop, and ask't Mr. *Coote* whither he was going, and when he ſaid to *Leiceſter-fields*, my Lord *Mohun* call'd out to us to ſet down, which we did, at the Back Door of the *Croſs-Keys* Tavern; They did both of 'em, my Lord *Warwick*, and my Lord *Mohun*, perſwade Mr. *Coote* to go home to *Weſtminſter*, and not to end the Buſineſs that night, but he would go on, and while we were there, there went 3 other Chairs up St. *Martins-Lane* on the other ſide of the way, then Mr. *Coote*, who was in our Chair, bid us take up, and follow thoſe Chairs into the Fields, and Swore Dam him he would run his Sword into one of us, if we did not make haſte, and overtake thoſe other Chairs, and go before them; I think his Words were, *Damn me, I'le run my Sword in your Breech, if you don't make haſte, and get before that other Chair.*

Mr. At. Gen. You ſay then, they went all away together up to *Leiceſter-fields.*

Browne. Yes, they did ſo?

L. Mohun. I deſire he may be ask't, whether I did not deſire him to go home with me to my Lodging at *Weſtminſter.*

Browne. Yes, you did, and beg'd of him as if it had been for an Alms, That he would put it off for that night; but when the other Chairs paſt by us at *Charing-Croſs* in St. *Martins-Lane*, he would have the Chair taken up, and us to make what haſte we could to get before 'em thither, or elſe he Swore Damn him he would run his Sword into one of us, if we did not make haſte to get to *Leiceſter-fields* before the other Chairs that went up the other ſide of the way.

Mr. At. Gen. When the other Chairs were paſt by, and you went away to *Leiceſter-fields*, pray tell my Lords what happn'd then?

Browne.

Browne. We went away to *Leiceſter-fields*, and when we came to *Green-ſtreet* End, and were entring upon the Square upon the broad Stones, Mr. *Coote* call'd out to us, and bid us to ſet him down, and ſo did the other 2 Chairs, and when he put his Hand in his Pocket to diſcharge us, my Lord of *Warwick* put his Hand in his Pocket to pay the 3 Chairs, and Mr. *Coote* offer'd Half a Guinea to Diſcharge the Chairs, and my Lord *Mohun* did produce 3 *s.* and with it diſcharged all the 3 Chairs, and they all 3 walked away together forward upon the Broad Stones on the Right Hand ſide of the way; It was ſo dark a night, I could not ſee half a dozen yards from me; It was the darkeſt night, I think, that ever I ſaw in all my Life, and therefore I cannot tell what became of them after they went out of the Chairs.

Mr. At. Gen. Pray, Did you ſee my Lord *Mohun* afterwards.

Browne. No, I did never ſee my Lord *Mohun* afterwards till now here at the Bar.

Mr. At. Gen. You ſay it was ſo dark, that you could not ſee 3 yards from you, pray, What did happen afterwards when you were in the Field?

Browne. A little while after we had ſet down theſe Gentlemen, I fill'd my Pipe out of my Box, and before I could light it, I heard a Calling Chairs, Chairs, and I went up towards the end of the Square, where the Noiſe was, and when I came there they would have had me lift the Chair over the Rails, and I told them, if I did I could not lift it over again; but they would needs have me lift it over, and I did ſo, and by the light of the Lanthorn I ſaw Capt. *French* and Capt. *James* holding up Capt. *Coote*, and they did deſire me to take him into our Chair, but he was in ſuch a Condition that I could not get him into the Chair; It was before I could well light my Pipe the Chairs were call'd.

Mr. At. Gen. Who did call, can you tell?

Browne. No, indeed I cannot tell who did call Chairs, but it was a Voice from the upper end of the Fields, and we lifted our Chair over the Rails into the Fields, and there were two Gentlemen holding up another Man; I have heard it ſaid it was Capt. *French* and Capt. *James*, and they cried out, Dear *Coote*, Dear *Coote*, and would have had him gotten into the Chair, but we could not; and my Lord of *Warwick* did then ſay, If any damage did come to the Chair, tho it were 100 *l.* we ſhould be ſatisfied the damage; but we were not able to get him into the Chair, and ſo there we left him.

Mr. At. Gen. You ſay you ſee Two Gentlemen holding up Mr. *Coote*, and 'twas a very dark night, How could you tell who thoſe Gentlemen were?

Browne. I could not ſee any thing of 'em till we came up with the Candle cloſe to 'em.

Mr. At. Gen. And what did they ſay when you came up cloſe to the Chair?

Browne. They offer'd me 100 *l.* Satisfaction for any Damage to my Chair; but they could not get him in, for he was at that time dead, I believe, for we went to hale him up, and to get him into the Chair, but we could not do it.

Mr. At. Gen. Can you tell who the Two Perſons were that held him up?

Browne. No, but by the deſcription of the Perſons they had ſuch Cloaths on as that they muſt be Capt. *French* and Capt. *James*, but indeed I cannot Swear directly who they were that were there, nor who they were that call'd for Chairs at the upper end of the Field; but when our Chairs was lifted over again over the Rails, and we came to the Corner to ſee who ſhould be taken in, there came one to us who bid us carry him to the *Bagnio* in *Longacre*, and thither we did go accordingly.

Mr.

D

we came to the corner of the Rails, at the way that goes to *Long-acre*, there we took up a Gentleman whom we carryed to the *Bagnio* in the *Long-acre*, we call'd out to the Watch, but they said it was not within their Ward, and they would not come.

Mr. Attorney General. Can you tell who were the Persons that were at the upper end of the Fields?

Brown. No, indeed, I cannot tell who they were.

Mr. Attorney General. Was my Lord *Mohun*, and my Lord *Warwick* the two?

Brown. No, my Lord *Mohun* was not there, nor my Lord *Warwick*; I know them so well, that it could not be them; one of the Gentlemen was bigger than my Lord of *Warwick*, and the other of them had other Cloaths than my Lord *Mohun*.

Mr. Attorney General. Was that the way they walk'd up, when they came out of the Chairs, that led to that end of the Fields where you found Mr. *Coote* wounded?

Brown. Yes, it was.

Mr. Attorney General. My Lords, this is but the Repetition of the Evidence that he gave to your Lordships yesterday.

Lord High Steward. If you have done with this Witness, my Lord *Mohun* may ask him any Questions.

Lord Mohun. I desire he may have him ask't, how far is the place where he carryed the Chair at first into *Leicester-fields*, from the place where they put over the Chair within the Rails, and would have taken in Mr. *Coote*?

Brown. It is about fifty Yards, as near as I can guess.

Lord Mohun. I desire to know of him, whether the place where we were set down, that came in the first three Chairs, from *Looker's* into *Leicester-fields*, to the place where he found Mr. *Coote* supported by the two Gentlemen, be not from one end of the Fields to the other?

Brown. The place where we set down Captain *Coote*, is at the lower end of *Green-street*, and the place where we found him Wounded, was at the upper end by *Leicester-house*.

Lord High Steward. I think it is understood, that *Green-street*, which comes out of St. *Martins-lane*, is at one end of *Leicester-square*, and *Leicester-house* is at the other End.

Mr. Attorney General. Pray where was it that you saw the two Gentlemen hold up Captain *Coote*, and cry out, *My dear* Coote, *My dear* Coote?

Brown. It was on one side of the Cross-way, that leads out of the Fields towards *Newport-street*, and by *Leicester-house*.

Mr. Attorney General. But you say, three Chairs did go up towards the upper end of the Fields?

Brown. Yes, they did so; but our three Chairs that came away first from the *Greyhound-Tavern*, set down at *Green-street* end, and the three Gentlemen that came in our Chairs went up the Rails to 'em; but whether they went I can't tell, but soon after we heard calling for Chairs again, and so we went up, where we found the two Gentlemen holding up Captain *Coote*, and saying, *My dear* Coote, *My dear* Coote.

Mr. Attorney General. But when you were called the second time, that is into the Fields, where was the place you say that you found them in?

Brown. It was within the Rails, one side of the Cross-way towards *Leicester-house*.

Lord Mohun. Pray was that the direct way that I went from the place that I was set down, that is the lower end of *Green-street*, to the place that they afterwards went to, which was the *Bagnio* in *Long-acre*?

Brown. When Captain *Coote*, and my Lord *Mohun* were set down, and walk'd away upon the paved Stones of the Square, to the place where I found the two Gentlemen holding up Captain *Coote*, was the quite contrary way from the end of *Green-street* to the *Standard-Tavern*.

Lord

Lord High Steward. Who is your next Witness, Mr. *Attorney*?

Mr. Attorney General. The next Witness that we call, is *Robert Applegate*.

Who was Sworn.

Lord High Steward. What do you ask this Witness?

Mr. Attorney General. My Lords, this is the Chair-man that carryed my Lord *Mohun* to *Leicester-fields* from *Locket's*; he will give your Lordships an Account when he carryed him, who he carryed, and what happened afterwards, which is all but to the same purpose with the Evidence that he gave yesterday. But pray who was that whom you carryed on the thirtieth of *October* last to *Leicester-fields*?

Applegate. I carryed my Lord *Mohun* from *Locket's*, at the *Greyhound Tavern* in the *Strand* to *Leicester-fields*.

Mr. Attorney General. Pray how many Chairs were there of you that went away together?

Applegate. There were three of us that went away together, one carryed my Lord *Warwick*, we my Lord *Mohun*, and the third carryed Captain *Coote* which was the first Chair that went away.

Mr. Attorney General. Whither did you go?

Applegate. We went to the corner of St. *Martins-lane*.

Mr. Attorney General. Who do you say were in the other two Chairs?

Applegate. My Lord of *Warwick*, and my Lord *Mohun*.

Mr. Attorney General. When they came out first, what orders or directions were given?

Applegate. My Lord *Mohun* said, that he and my Lord of *Warwick*, and Captain *Coote*, would go all three together down to *Westminster*, and there they would all lye together, or be together that Night.

Mr. Attorney General. What Answer was given to what my Lord *Mohun* said?

Applegate. Indeed I do not remember any Answer that was given at all; but after that my Lord *Mohun* went into the Chair, and order'd us to follow down the other two Chairs towards *Westminster*, and we put up the Chair and came away; and when we came to St. *Martins-lane* end, the Chair that carryed Captain *Coote* turn'd up the *Lane*, and we being order'd to follow the other Chairs, went up the *Lane* too; but my Lord *Mohun* perceiving that they were not going down to *Westminster*, call'd out to stop, just when we were entred into St. *Martins-lane*, over against the back Door of the *Cross-keys Tavern*, and made the other Chairs to stand, and all the three Chairs were set a-breast before that place, and my Lord *Mohun* askt Captain *Coote* whether he was going? and he answered to *Leicester-fields*; he beg'd of him, as one would beg for an Alms, that he would not go that Night, for the Business could not be done that Night, and it were better to put it off till the next Morning.

Mr. Attorney General. Did they name what the business was that was to be done?

Applegate. No, but my Lord *Mohun* did say, 'twas impossible to be done that Night.

Mr. Attorney General. Well, and what happened afterwards, while you were in that place?

Applegate. While we were there, three other Chairs past by us, on the other side of the way, and going forward up the Street, Captain *Coote* order'd their Chairs to follow, and so we did to *Green-street* end, and there we set 'em down.

Mr.

Mr. Attorney General. Pray can you remember what was said by my Lord *Mohun* at the time when the other Chairs past by?

Applegate. He was then desiring and begging of Captain *Coote* to go home to *Westminster*, telling him that it could not be done that Night, but it must be defer'd till the next Morning; but Captain *Coote* said he would not delay it till the next Morning, but he would go to *Leicester-fields* that Night, and all three Chairs were order'd to go forward, and we did go on forward to *Leicester-fields*; my Lord *Mohun*, indeed, did beg and desire as heartily as, I say, a Man for an Alms, that they would let it alone for that Night; but Captain *Coote* would not, and ordered his Chair to go forwards.

Mr. Attorney General. You say my Lord *Mohun* beg'd as heartily as if it were for an Alms to defer it for that Night?

Applegate. Yes, he did so; so that I do really think that he was not concern'd in the matter.

Mr. Attorney General. If he were so earnest to defer and put off the business, how came you to carry him thither that Night? What Expressions did he use, particularly in St. *Martins-Lane*, after the other Chairs were past by?

Applegate. He said, If you must go, I'll go with you and see it; and he bid us take up and follow the other Chairs wherein Captain *Coote* and my Lord *Warwick* were; and we did go.

Mr. Attorney General. And where did you set my Lord *Mohun* down?

Applegate. At the hither end of *Leicester-square*, at the corner of *Green-street*, the lower corner of the paved Stones, going up to *Leicester-house*.

Mr. Attorney General. What became of the three Gentlemen that you set down at the end of *Green-street*?

Applegate. They went all three together up the Stone pavement, towards the upper end of the Square, towards the *Standard-Tavern*, I think.

Mr. Attorney General. Did they go together, or did they go asunder?

Applegate. They went together, I think, I did not see them part one from another.

Mr. Attorney General. Pray did you see my Lord *Mohun* afterwards?

Applegate. No, I did not.

Mr. Attorney General. What became of you afterwards?

Applegate. I staid a little at the lower end of the Square to take a Pipe of Tobacco, and when I had fill'd my Pipe, I heard calling, Chairs, Chairs again, at the upper end of the Square; and when we brought up our Chair to the upper end of the Fields, the first Man that I did see was my Lord of *Warwick*, who would have had us put over our Chair within the Rails; but we told him, we could not get it over again if any one was put in it; but if they would come out into the Square, there we were ready to carry 'em any where; and when we came to the upper end of the Square, there was Captain *French*, and we took him into the Chair, and he bid us carry him to the Bagnio in the *Long-acre*; and at *Newport-street* end he would have had us stop and pull off his Cloaths, for he believed he was a dead Man.

Mr. Attorney General. Pray who did you see there at the upper end of *Leicester Fields*?

Applegate. No body, indeed, but my Lord of *Warwick*, and Mr. *French*.

Mr. Attorney General. No body but them two?

Applegate. No, no body but them two.

Mr. Attorney General. Where do you say that was, that the calling for Chairs was, and where you brought your Chair?

Applegate. It was just at the upper end of *Leicester-fields*, by *Leicester-house*, and by the *Standard-Tavern*.

Mr. Attorney General. Who was it that you there took up?

Applegate. It was Captain *French*.

Mr.

Mr. Attorney General. Whither then did you carry him?

Applegate. We were order'd to go to the *Bagnio* in *Long-acre*; and thither we, and another Chair that carried my Lord *Warwick*, did go; and when we came there, we did knock a good while before we could get any body up; and when they were let in, we came away, and were bid to call for our Fare the next Morning.

Mr. Attorney General. Pray where was it that you took up Captain *French*?

Applegate. It was at the upper end of all *Leicester-fields*.

Mr. Attorney General. And you went away with him, did you?

Applegate. Yes, as soon as ever we took him up; it was as soon as ever we could, at the outside of the Rails. I was the first Chair that, upon the calling for Chairs after they came thither, was by the *Standard-tavern*; and from thence we went into *Long-acre*.

Mr. Attorney General. Where about is the *Standard-tavern*?

Applegate. It is at the further end of the Fields by *Leicester-house*; it is by *Cranburn-Lane*, which is the Street that leads into *Newport-street*, and so into St. *Martins-lane*; and then we were to go to the *Bagnio* in the *Long-acre*.

Lord High Steward. My Lord *Mohun* will you ask this Witness any Questions?

Lord Mohun. Yes, my Lord, I have a Question or two to ask him; I desire to ask him, Whether, when we were going along, and the Chair in which Captain *Coote* was turn'd up St. *Martins-lane*, I did not call out to have him stop, and know whither they were going?

Applegate. Yes, my Lord, you did.

Lord Mohun. Pray whither did I bid you go, when you first took me up at *Lockets*?

Applegate. My Lord *Mohun* bid me follow those Chairs, but go down to *Westminster*, for he said they all three would go together, and lie together that Night.

Lord Mohun. My Lords, I desire this Man may be ask'd, whether there were not several ways of going out of the Fields, besides those of *Green-street* and the *Standard-tavern*?

Applegate. Yes, my Lord, no doubt there are.

Lord Mohun. Then I'll leave it to your Lordships to make the Observation; for there is no Evidence that I was ever seen in the Field after I alighted out of the Chair at *Green-street* end; and I hope your Lordships do observe, That he has told you, I was as earnest in begging Captain *Coote* to defer going to *Leicester-fields* till the next Morning, and begg'd as heartily of him for it, as any Beggar would do for an Alms.

Lord High Steward. My Lord, their Lordships, no doubt, have made that Observation; for he did say so.

Lord Mohun. My Lords, I have no more to ask him.

Lord High Steward. Mr. Attorney, Who is your next Witness?

Mr. Attorney General. Our next Witness is *Peter Ketro*, who likewise was a Chair-man that carryed my Lord *Mohun* into the place where the Fact was done.

Peter Ketro was Sworn.

Mr. Attorney General. Pray will you acquaint my Lords who you carried upon the thirtieth of *October* last, from the *Greyhound-tavern* to *Leicester-fields*?

Ketro. Upon the thirtieth of *October* last, in the Morning (which was Sunday) very early, we were call'd to the Door of the *Greyhound-tavern*, and when we came there, there were several other Chairs there, for there was no Coach, it seems, to be had.

Mr. Attorney General. And who was in your Chair?

Ketro. My Lord *Mohun*; and there were two other Chairs that went away together, wherein were Captain *Coote* and my Lord of *Warwick*.

Mr. Attorney General. And whither did you go from thence?

Ketro. We went along the Strand, and when we came to the end of St. *Martins-lane*, the Chair that Captain *Coote* was in, we ſuppoſed by his order, turn'd up the Lane; for my Lord *Mohun* had given us order to go down to *Weſtminſter*; and then when we came there, to the end of St. *Martins-lane*, he call'd out to ſtop, and to have the other Chairs ſtopt, and they ſtood ſtill at the back Door of the *Croſs-keys-tavern*, which is at the end of St. *Martins-lane*, and all the three Chairs did make a ſtand at that place, and my Lord of *Warwick*, and my Lord *Mohun*, and Captain *Coote* talk'd together; and my Lord *Mohun* did deſire Captain *Coote* to go down to *Weſtminſter*, and to put off the buſineſs for that Night, for nothing of buſineſs could be done; then my Lord of *Warwick* did ſay, if they did go on he would go on with them; but my Lord *Mohun* did endeavour to perſwade 'em to go down to *Weſtminſter* to Lodge, for nothing could be done that Night; but when the other three Chairs paſt by, on the other ſide of the way, and Captain *Coote* would needs go forwards to *Leiceſter-fields*, my Lord *Mohun* did bid us take up and follow them; and he ſaid, If they would go, he would go and ſee what came of it; ſo we took up, and followed the other Chairs, and went up the Lane, and into *Green-ſtreet*, to the lower end of *Green-ſtreet*, next the Square, and there our three Chairs ſet down my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote*, and were diſcharged.

Mr. Attorney General. And what became of them after?

Ketro. There they went up upon the broad Stones, up towards the upper end of the Fields.

Mr. Attorney General. Did they go all together, or did they part?

Ketro. They went together, for any thing I know; I ſaw no parting, and indeed it was ſo dark a Night, that I cannot tell what became of 'em after they went out of the Chairs; It was one of the darkeſt Nights that ever I ſaw.

Mr. Attorney General. Well then, pray what hapned after that?

Ketro. I went to light my Pipe of Tobacco, and before we could light a Pipe of Tobacco, there was calling at the upper end of the Square for Chairs again, and ſo up we went with our Chair to the upper end of the Fields; and when we came there, ſome body call'd out to have us lift our Chair over within the Rails, but we told 'em, if we did ſo, we could not get it over again, if any body were put into it; and ſo we were bid to go to the end of the Rails, in order to the getting out from that place, and getting in of any body that was to go into the Chair; and when we came to the end of the Rails, we took up Captain *French*, and he bid us carry him to the *Bagnio* in the *Long-acre*, and we did ſo, and at *Nuport-ſtreet* end he would have had us have pull'd off his Cloaths, for, he ſaid, he believ'd he was a dying Man; but we carryed him on to the *Bagnio* in *Long-acre*, and there came after us my Lord of *Warwick* in another Chair, and there we ſet 'em down.

Mr. Attorney General. I have a Queſtion to ask you, Friend, Did you not ſee my Lord *Mohun* after you ſet him down at *Green-ſtreet* end?

Ketro. No, indeed, not I; I did not, after he went out of the Chair.

Mr. Attorney General. Can you tell whither he went after he went out of the Chair?

Ketro. No, I can't tell whither he went; they all three went up the pav'd Stones together, but whither they went I can't tell.

Mr. Attorney General. Did you hear of any other Chair that was at that end of the Fields at that time?

Ketro. There was another Chair at that time, at the upper end of the Fields.

Mr. Attorney General. Did you hear 'em deſire to take Mr. *Coote* into that Chair?

Ketro. No, I did not.

Mr. Attorney General. Nor do you know any thing of their putting Mr. *Coote* into a Chair?

Ketro. No, indeed not I; what they did as to the other Chair that was before, they can beſt tell, for I can't.

Lord High Steward. Who is your next Witneſs, Mr. *Attorney?*

Mr. Attorney General. *Richard Edwards.*

Lord High Steward. What do you call him to?

Mr. Attorney General. Becauſe we would not trouble your Lordſhips with the Repetition of every one of the Witneſſes that were here yeſterday; this is the Man that carryed Mr. *Downe* into the Field.

Edwards was Sworn.

Lord High Steward. Mr. *Attorney*, What do you ask this Witneſs?

Mr. Attorney General. Pray do you acquaint my noble Lords here, who you carryed in your Chair to *Leiceſter-fields?*

Edwards. Indeed, I can't tell, there were three Chairs that took up three Perſons at the *Greyhound-tavern* in the *Strand*, after three other Chairs were gone away, and every one had a Gentleman in 'em; I, for my part, did not know who was in our Chair; but when we ſhut up the Chair we were bid to go to the *Standard-tavern* in *Leiceſter-fields*, and thither we did go, and there we ſet down the Gentleman that was in our Chair, and away we went; and as we went up St. *Martins-lane*, we paſt by the three other Chairs that had turn'd up before, at the Back door of the *Croſskeys-tavern.*

Mr. Attorney General. Did you ſee the other three Chairs in *Leiceſter-Fileds* afterwards?

Edwards. No, indeed I did not; but went up to the *Standard-tavern*, and ſet down the Gentleman that was in our Chair, and there we left him, and went away.

Mr. Attorney General. Pray can you tell who it was that you carryed?

Edwards. Indeed, I cannot very well tell; but I believe it was Captain *James*, or Mr. *Downe.*

Mr. Attorney General. When you came to the *Standard-tavern*, pray what hapn'd, what paſt there?

Edwards. To the beſt of my knowledge I took hold of the knocker of the Door, and knockt at the Door, and the Gentleman came out, and was ſet down there; and he gave me a Shilling, and away I went with my Chair.

Mr. Attorney General. When you ſet him down at the *Standard-tavern*, pray what did he ſay?

Edwards. He gave me a Shilling, and bid me go about my buſineſs; and ſo we went away.

Mr. Attorney General. Were you there when you heard 'em call Chairs back?

Edwards. No, we went away as ſoon as we had ſet 'em down at the *Standard-tavern.*

Mr. Attorney General. Did you obſerve which way they went after you ſet him down?

Edwards. No, indeed I did not; I never minded which way they went after we ſet him down.

Mr. Attorney General. Which way did you go?

Edwards. We went away down towards *Charing-croſs.*

Mr. Attorney General. Did you ſee any other Chairs in the Square when you went down?

Edwards. Yes, there were other Chairs at the other end of the Square.

Mr.

Mr. Attorney General. Did you ſee any Gentlemen as you came down, walking up towards the *Standard-tavern*, upon the pav'd Stones?

Edwards. No indeed, my Lords, not that I remember; but I did ſee the other three Chairs as I paſt by at *Green-ſtreet* end; who were in 'em, or what was become of them that were in 'em, that I can't tell.

Mr. Attorney General. What did they ſay to you any of 'em at that time?

Edwards. They askt us if we were going away, and we told 'em Yes, we were diſcharg'd.

Mr. Attorney General. But pray did you not meet any of the other Gentlemen upon the pav'd Stones?

Edwards. No indeed, I did not ſee, to the beſt of my Remembrance, any other Gentlemen upon the pav'd Stones.

Mr. Attorney General. What did the other Chair-men ſay to you?

Edwards. They askt if we were coming away; and we left 'em behind us.

Lord High Steward. Has my Lord *Mohun* any Queſtions to ask him?

Lord Mohun. No, I have not.

Lord High Steward. Mr. *Attorney*, who is your next Witneſs?

Mr. Attorney General. *Jackſon*, who was the Chairman that carryed Captain *James*.

He was Sworn.

Mr. Attorney General. Pray will you acquaint my Lords who you carryed from *Lockets* to *Leiceſter-fields*?

Jackſon. Captain *James*? There were ſix Chairs in all; I do not know who went in the other Chairs, but in the three Chairs that went together, when we went, there was Captain [illegible], Captain *French*, and Captain *James*.

Mr. Attorney General. And where did you ſet him down?

Jackſon. At the *Standard-Tavern* in the Square of *Leiceſter-fields*.

Mr. Attorney General. What became of him after you ſet him down?

Jackſon. We knockt twice at the Tavern-door, and then he gave us a Shilling, and we went away preſently, and went down on the left Hand upon the pav'd Stones, towards *Green-ſtreet* end.

Mr. Attorney General. Did you meet any Perſons coming up upon the paved Stones?

Jackſon. Yes, my Lord, I did.

Mr. Attorney General. Can you tell who thoſe Perſons were?

Jackſon. Indeed, I cannot tell.

Mr. Attorney General. How many were they in number?

Jackſon. They were two or three; but it was ſo dark, that I cannot tell how many they were.

Mr. Attorney General. Which way were they walking?

Jackſon. They were going up towards the middle Street.

Mr. Attorney General. How far was that from the *Standard-tavern*?

Jackſon. It might be about ſixty Yards from the *Standard-tavern*.

Mr. Attorney General. You ſay there were three Chairs ſtanding at the end of *Green-ſtreet* when you came by?

Jackſon. Yes, there were ſo.

Mr. Attorney General. Had you no diſcourſe with them?

Jackſon. No, indeed, I had not.

Mr. Attorney General. Did you not ask them why they ſtaid there?

Jackſon. No, indeed, I did not; we paſt by and went home.

Mr. Attorney General. You know my Lord *Mohun*, don't you?

Jackſon. Yes, I do, very well.

Mr. Attorney General. Was not my Lord *Mohun* in that Company?

Jackſon. He was when the ſix Chairs were call'd to *Lockets*; but I did not hear any Diſcourſe, that I can remember, that paſt among 'em, nor do I know, or did hear, what became of my Lord *Mohun* afterwards.

Mr. Attorney General. Were thoſe the other three Chairs that went away from *Lockets* firſt, that you ſaw at *Green-ſtreet* end?

Jackſon. Indeed, my Lords, I believe ſo; I cannot ſwear that they were thoſe three Chairs; when we had ſet down Captain *James*, we did not look back any way at all, but went away home, it being ſo late and ſo dark.

Lord High Steward. My Lord, *Mohun* will you ask this Witneſs any Queſtions?

Lord Mohun. No, my Lord.

Mr. Attorney General. Then my Lord we ſhall call *William Salmon*, who was the Surgeon that did ſearch the Wound by the Coroner's Command, when he took the Inquiſition upon the view of the Body.

Who was Sworn.

Mr. Attorney General. Pray did you view the Body of Mr. *Coote* after he was Dead?

Salmon. Yes, I did view his Body by the command of the Coroner at the Watch-houſe where it lay in St. *Martins-lane.*

Mr. Attorney General. Pray then will you acquaint my Lords what Wounds you found upon the Body?

Salmon. There was one upon the left part of the Breaſt, near the Collar-bone, which, upon probing, I found to be half an Inch in Breadth, and four or five Inches deep downward; the other was a Wound that was in his left ſide, juſt under the ſhort Ribbs, and that was upward; and upon probing of it, I found it was about the breadth of an Inch at the Orifice, and about the depth of five or ſix Inches, and pierced through the Diaphragma.

Mr. Attorney General. Pray did you obſerve any difference in the Wounds, or in the Orifice of 'em?

Salmon. That below was a large Wound, larger than the other.

Mr. Attorney General. Were the Wounds do you think given with two Swords, or with one and the ſame Sword?

Salmon. Indeed I can't tell.

Mr. Attorney General. Did you look upon either, and which of them to be Mortal?

Salmon. I look'd upon both to be Mortal.

Lord High Steward. If you have done with him Mr. *Attorney*, will my Lord *Mohun* ask him any Queſtions?

Lord Mohun. No, I ſhall ask him no Queſtions, for I think I need not, I was never prov'd to be in the Company, in the place where the Fighting was.

Mr. Attorney General. We have done with calling of Witneſſes, 'till we hear what my Lord *Mohun* ſays to it.

Lord High Steward. My Lord *Mohun*, This is the time (the Kings Evidence being finiſhed) for you to call your Witneſſes, and make your Defence.

Lord Mohun. My Lords, I ſhall not call many Witneſſes, for I think there is nothing that fixes any thing of Guilt, as to Captain *Coots* Death, as to me; but I ſhall call one Witneſs that was here (as I underſtand) yeſterday, but not Examined, and that is a Perſon that ſaw me afterwards, and knows that I had a Wound in my Finger laid open, and that Wound was received at *Lockets*, by endeavouring to part 'em when they were quarelling there at that time.

The Witneſs ſtood up.

Lord High Steward. Tho' you are not upon your Oath, yet you are as much obliged in Juſtice and Conſcience to ſpeak the exact truth, as if you were upon your Oath, therefore have a care what Teſtimony you give.

Witneſs. Yes, my Lord.

Lord High Steward. What is the Queſtion you would have this Witneſs ask'd?

Lord Mohun. What he knows of my being Wounded about this time, and what I declared concerning that Wound, how I received it?

Lord High Steward. I will not refuſe to ask the Queſtion, but I muſt acquaint your Lordſhip that it ſignifies nothing in point of Evidence at Law, what you your ſelf did declare after the Fact was over. It is Material what you did to prevent this Miſchief before it hapned, but not what you ſaid or declared after the thing was done. You hear my Lords Queſtion, what ſay you to it?

Witneſs. I was at my Lord *Mohun*'s ſeveral Days after this buſineſs hapned, at the Lodging where he lay, and where I ſaw him; he had a hurt in his Hand, and it was layd open, it was in the Finger, and that he ſaid was all he got by endeavouring to part people from Fighting.

Mr. Attorney General. Pray Sir, when was this?

Witneſs. It was ſeveral Days after the death of Mr. *Coote*.

Lord High Steward. I told your Lordſhip before, that in Point of Law ſuch Evidence would ſignifie nothing, becauſe your declaring any matter after the thing was done, in relation to the Fact, could not be admitted as legal Evidence; if any of my Lords be of another Opinion, I ſuppoſe they will declare it?

Lord Mohun. My Lords, I ſubmit it to your Lordſhips, I only deſire he may be askt whether he ſaw my Hand or no, and how it was?

Witneſs. I ſaw my Lord's Finger, and it had been laid open ſome time before; and he ſaid, he had received that Wound by endeavouring to part Captain *French* and Captain *Coote*; that's all I know of the matter.

Mr. Attorney General. But pray when was that that he declared ſo, how long after the death of Mr. *Coote*?

Witneſs. It was ſeveral Days after that.

Lord High Steward. You hear, in point of Law, that can be no Evidence at all; if you have no other Witneſſes to call, your Lordſhip would do well to ſum up your Evidence, and make what Obſervations you think fit upon the Evidence that has been given for the King?

Lord Mohun. My Lords, I hope I ſhall make my Defence againſt this Accuſation with all the modeſty and ſubmiſſion to your Lordſhips that becomes me; I am very much aſhamed to be brought before your Lordſhips upon any ſuch account as this again, after having been once before your Lordſhips upon ſuch an account before; I may very well ſay, I am not guilty at all of having any hand in Mr. *Coote*'s death, and I can aſſure your Lordſhips, I will avoid all occaſions of giving you any trouble of this nature for the future; I do not doubt but to acquit my ſelf of all Guilt in relation to this matter; and, indeed, with ſubmiſſion to your Lordſhips, there has been no Evidence given relating to me, that do infer any Guilt upon me, to prove that I was at the place where this Fact was done; therefore I ſhall only make ſome few little Remarks upon what has been ſaid, and leave it all to your Lordſhips conſideration: The King's Council firſt have call'd the Drawer of the Houſe, and he has ſatisfied that I did ſo far endeavour to part 'em, that I threaten'd to ſend for the Guards and ſecure 'em, if they would not go home, and when they went into the Chairs, I went into my Chair, on purpoſe to follow 'em down to *Weſtminſter*, whither I would have had 'em gone; the prick that I got in my Finger, of it ſelf ſpeaks, that I endeavour'd to part 'em, and ſo the Drawer he has told you; I am ſure it was the occaſion of a great deal of pain to me, it being forc'd to be afterwards laid open; the Chair-men that carried Mr. *Coote*, ſwears, that I, at the Door of the Tavern in St. *Martins-lane*, did make 'em ſtand, and when I came up to 'em, I begg'd, as for an Alms, that they would go home; and I askt *Coote* whither he was going, which proves that I was not conſcious of any deſign of going to fight at that time; your Lordſhips are likewiſe told, that when we came to *Green-ſtreet* end, I was ſet down upon the pav'd Stones, I was ſo indeed, and I went up about five or ſix Yards, but that is all that's prov'd; but I

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did take the quite contrary way to the place where Mr. *Coote* was wounded; then there was another Chair-man, one *Applegate*, and truly what use they make of him I cannot imagine, as an Evidence against me; for he says, I was very earnest in St. *Martins-lane* to hinder any Quarrel, and indeed at the Tavern door, at *Lovet's*, I was so at first; and when we came to St. *Martins-lane* end, he says, that I order'd 'em to make them stop, and askt *Coote* whither he was going, and he saying he was going to *Leicester-fields*, I endeavour'd all I could to perswade him to the contrary, and did intreat him that he would go no farther, but go down to *Westminster* to his Lodging, or lodge with me; but Mr. *Coote* would not give me time, at that time the other Chairs coming by, to give him further reasons, but would go away; and then it is objected, that I should say, That if they would go, I would go and see, that was, my Lords, I would go on till I could have a further opportunity to prevent any Fighting amongst them; and the Witness *Keiro* says, my Lord of *Warwick* did bid the Chair to follow the other Chair in which Captain *Coote* was; my design was for *Westminster*, to go to my Lodgings, and when we came to the end of the Square, if I did go up the whole Stones, it was directly the contrary way to the place where it is prov'd this Fact happen'd; for the next Witness, *Edwards*, he says he saw no body walking upon the pav'd Stones, and truly I did go the direct way into *Newport-street*; and for my not appearing before, it was for avoiding confinement, and I must submit the whole matter to your Lordships, how far any Guilt is fix'd upon me, not being prov'd to be in the Field at the time when they fought, or seen to be in the Company when they came up and found Mr. *Coote* wounded, and dying, or dead. It is a plain case I could have no hand at all in his death, and so I think I need give no further trouble to your Lordships, for I believe your Lordships cannot but be satisfied, that, as I have pleaded, I am not Guilty of killing this Gentleman; nay, it is impossible that I should go into the Field to be a second, when my own right Hand was Wounded, for I was not able to hold my Sword in my Sword Hand, because of that Wound; I submit the matter intirely to your Lordships, from whom I am sure to meet with every thing that will be suitable to Honour and Justice.

Lord High Steward. The Kings Council are now to Sum up the Evidence for the King.

Mr. Sollicitor General begun to Sum up the Evidence for the King, but his Voice was so low, and the noise in the Hall so great, that he could not be heard, and therefore the *Lord High Steward* moved the House that he might stand by the Prisoner at the Bar, which was something nearer than the place where the Kings Council stood, as was done the day before; and it was order'd accordingly.

Lord High Steward. Mr. *Sollicitor*, Pray raise your Voice as much as you can, that all my noble Lords may hear you.

Several of the Lords did move, that one that had a better Voice might Sum it up, and particularly Mr. *Cooper*; but it being usually the part of the *Sollicitor General*, and he only having prepared himself, he was ordered to go on; but for the better hearing of him, several of the Lords towards the upper end of the House, removed from their Seats down, as they did the Day before, to sit upon the Wool-packs.

Mr. Sollicitor General. My Lords, I am of Council for the King against this Noble Lord, my Lord *Mohun*, the Prisoner at the Bar, who has been upon his Tryal this Day, and it comes to my turn to Sum up the Evidence that has been given against him, which is but a Repetition of what your Lordships, no doubt of it, have taken exact notice of; but I must shortly Sum up the chief of the Particulars thereof, and make a few Remarks what of that Evidence sticks particularly upon my Lord *Mohun*. The first Witness was the Drawer of the House,

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at the *Greyhound*, in the *Strand*, who gives you an Account who were at his Mistress House the Nine and twentieth of *October* last, and particularly, that my Lord *Mohun* was there in the same Company wherein this Gentleman was that was unfortunately kill'd, and that he continued in that Company till very late that Night, or rather very early the next Morning, when after the Reckoning was paid, they came all down to the Bar and call'd for Coaches; and he tells you that he was sent out, and he tells you what he was sent for, he was sent for Coaches, and so cannot give any Account what past while he was gone; but when upon calling for Coaches none could be had, there was order for Chairs to be call'd, and Chairs were brought to the Door; and when he came in again he heard the Clashing of Swords, and there were three of 'em on the one side of the Bar, and three of 'em on the other; indeed he does say, he did not see when the Swords were drawn, but at that time they were putting up their Swords, my Lord *Mohun* was in the Company, upon which I would observe to your Lordships, that there had been some Fighting, for the Witness says upon my Lords Question, that my Lord call'd for a Napkin to put his Hand in, for his Fingar was cut; and he said, this is all that I have got by endeavouring to part them; so that it shows there was a Quarrel, and my Lord *Mohun* was in it: When the Chairs were brought to the Door they went into them, there went Mr. *Coote* into one, into the second my Lord of *Warwick*, and into the third my Lord *Mohun*, so that still my Lord *Mohun* was in the Company, and they went away together; and tho' it is pretended by my Lord, That he did all he could to prevent the Quarrel, yet he gave Directions to the Chair-men that carryed him to follow the other Chairs, and your Lordships perceive what the business was that they went about, and the other three Chairs followed after presently, so that they all went away together; nay, my Lord himself does not disown his being in the Company tilll they came into *Leicester-fields*. Next I would observe what fell from *Brown*, who carryed the very Gentleman that was kill'd, Mr. *Coote*, that my Lord *Mohun* was in one of the three first Chairs, and that they all went together, till that my Lord *Mohun* call'd out to stop, upon the turning up into St. *Martins-lane*; and tho' they stopt in St. *Martins-lane*, and my Lord *Mohun* did intreat them to let it alone at that time, yet it was only to let it alone till the Morning; and when the other three Chairs past by on the other side of the way, and *Coote* would have them go on, my Lord *Mohun* said, If they would go on, he would go with them and see it. *Applegate*, the Chairman, that carryed my Lord *Mohun*, says the same; and so it is plain, my Lord *Mohun* did go on with an intention to make one in the Affray; for *Applegate* says, That when my Lord *Mohun* could not prevail upon his perswasions, and when *Coote* went away after the other three Chairs were past by, my Lord *Mohun* said, If you do go, I must go and see it; and they did go all together: And the Chairman says, he set my Lord *Mohun* down at the end of *Green-street*, at the lower end of the Fields, where the other two Chairs set down Captain *Coote* and my Lord of *Warwick*, and that they all three walk'd up together towards the *Standard-Tavern*; still all this proves my Lord did go there, and that he himself did say he would go and see it; and it is plain that my Lord *Mohun* did go as far as *Leicester-fields*, and it is only his Declaration concerning himself, without any proof, that he went away, and did not go into the Fields, to the place where the Fact was done; and we think it is sufficient proof that he was one of them that were concern'd, because we do prove, that he was all along in the Company till the very time that they came into the place where the thing was done. Then there is the Chair-man that carryed Mr. *James*, and he tells your Lordships, That the three first Chairs that went up St. *Martins-lane*, went to the *Standard-tavern*, and there they knockt at the Door, and paid the Chair-men, and went out of their Chair; and so says the other Chair-men that carryed Captain *Downs* and Captain *French*; and they say also, That when they came down the paved Stones again, they heard Chairs call'd for, but they did not interpose at all in the matter, but

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the other two Chairs it ſeems did, for they went up to the upper end of the Square, where there were two Perſons holding up Mr. *Coote*, and after they had put the Chair over the Rails, in order to have him carried away in a Chair, but they could not get him into the Chair. I would likewiſe obſerve from the Evidence of the Surgeon, who gives you an Account of what nature the Wounds were, one was in the Breaſt, near the Coller-bone, on the left ſide, the other was under the Short-ribs, on the left ſide too, which could not be given him by the Perſon that he was fighting with, he being a right-hand Man, as was prov'd by his Servant: My Lord *Mohun* has call'd but one Witneſs, which is only about a little Circumſtance of his being wounded in the Hand, and having the Wound laid open, but that was two Days after this Fact was done; my Lord *Mohun* could not but know that the matters he was to anſwer, related to a time before. It muſt be agreed to me, that they all three, my Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coote*, went all away together, that they were carried to *Leiceſter-fields*, that they were ſet down together, and walk'd up together upon the Stone pavement, when the others were gone towards the upper end of the Fields; ſo that in all probability, they all went together into the place where the Fight was, and were all concern'd; and if ſo, my Lord *Mohun* muſt be equally guilty with the reſt, my Lord *Mohun* knowing what Buſineſs it was they were going about. It muſt be left to your Lordſhips Judgment, whether he ſhall not be preſumed to be there when the Fact was done, eſpecially his ſaying, when he could not prevail in St. *Martins-lane*, to put the matter off till another time, that if they did go on, he would go and ſee it; ſo that putting theſe two Circumſtances together, his going in one of the Chairs with my Lord *Warwick* and *Coote*, and what he ſaid after when the Chairs ſtopt in St. *Martins-lane*, we think are Circumſtances to induce your Lordſhips to believe, that he was preſent at the time of the Fact committed, or very near the place; and if that be ſo, how far he is Guilty muſt be ſubmitted to your Lordſhips conſideration; and this is all that I ſhall trouble your Lordſhips with, without repeating the particular Evidence, which your Lordſhips, I am ſure, very well remember.

Lord Mohun. My Lords, I deſire I may ſay one Word in anſwer to what Mr. Sollicitor has obſerv'd; I think your Lordſhips have had no Evidence given you where Mr. *Coote* was kill'd, but only the Chair-man that was deſir'd to bring over his Chair within the Rails, ſays it was towards *Penton-ſtreet*, which is quite contrary to the place where I was ſet down at *Green-ſtreet* end; I muſt then be at a very great diſtance from the place where the Fact was done.

Lord High Steward. If all have done on both beſides, then your Lordſhips have nothing left but to conſider of the Evidence which has been given, which I ſuppoſe you will do among your ſelves?

Lords. Ay, Adjourn, Adjourn.

Lord High Steward. Is it your Pleaſure, my Lords, to Adjourn into the Houſe of Lords?

Lords. Ay, Ay.

L. H. St. This Houſe is Adjourn'd into the Houſe of Lords.

And the Lords went back in the ſame Order to the Houſe of Lords, and there they ſtay'd for about two Hours time, debateing the matter among themſelves, and afterwards returned again into the Court in *Weſtminſter-Hall*, and were ſeated all in their places as they were before, and the *Lord High Steward* was ſeated in the Chair before the Throne.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! My *Lord High Steward* of *England*, his Grace, doth ſtraightly Charge and Command all manner of Perſons here preſent to be uncovered, and keep Silence, upon Pain of Impriſonment.

L. H. St. Is it your Lordſhips pleaſure to go on now to give your Judgment?

Lords. Ay, Ay.

L. H. St. Then I muſt pray your Lordſhips, to give me time to write down your Opinions diſtinctly, that I may be able to acquaint you with certainty of the Numbers.

Lords. Ay, Ay.

Then the *Lord High Steward* ſtood up, and put the Queſtion to every Lord beginning with the Youngeſt Baron, to know what his Judgment was, and the Lord to whom he call'd, ſtood up in his place Uncovered, and laying his right Hand upon his Breaſt, deliver'd his Judgment in the manner following.

L. H. St. My Lord *Bernard*, Is *Charles* Lord *Mohun* Guilty of the Felony and Murder whereof he ſtands Indicted, or Not Guilty?

L. Bernard. Not Guilty, upon my Honour.

The ſame Queſtion was asked ſeverally of all the Lords, who in the ſame Form delivered their Opinions, as followeth.

L. Herbert. Not Guilty, upon my Honour.
L. Weſton. Not Guilty, upon my Honour.
L. Aſhburnham. Not Guilty, upon my Honour.
L. Chalmondly. Not Guilty, upon my Honour.
L. Jefferys. Not Guilty, upon my Honour.
L. Godolphin. Not Guilty, upon my Honour.
L. Guilford. Not Guilty, upon my Honour.
L. Oſelſtone. Not Guilty, upon my Honour.
L. Osborne. Not Guilty, upon my Honour.
L. Craven. Not Guilty, upon my Honour.
L. Cornwallis. Not Guilty, upon my Honour.
L. Granville. Not Guilty, upon my Honour.
L. Berkley. Not Guilty, upon my Honour.
L. Lexington. Mot Guilty, upon my Honour.
L. Rockingham. Not Guilty, upon my Honour.
L. Lucas. Not Guilty, upon my Honour.
L. Culpeper. Not Guilty, upon my Honour.
L. Byron. Not Guilty, upon my Honour.
L. Jermin. Not Guilty, upon my Honour.
L. Leigh. Not Guilty, upon my Honour.
L. Raby. Not Guilty, upon my Honour.
L. Howard. Not Guilty, upon my Honour.
L. Lovelace. Not Guilty, upon my Honour.
L. Hunſdon. Not Guilty, upon my Honour.
L. Wharton. Not Guilty, upon my Honour.
L. Eure. Not Guilty, upon my Honour.
L. Dudly. Not Guilty, upon my Honour.
L. Fitzwalter. Not Guilty, upon my Honour.
L. Willoughby. Not Guilty, upon my Honour.
L. Audley. Not Guilty, upon my Honour.
L. Abergaveny. Not Guilty, upon my Honour.

L. H. Steward. My Lord Viſcount *Lonſdale*, Is *Charles* Lord *Mohun* Guilty, *&c.*

L. Viſcount Lonſdale. Not Guilty, upon my Honour.
L. Viſcount Townſend. Not Guilty, upon my Honour.

L. H. Steward. The Earl of *Grantham*, Is *Charles* Lord *Mohun* Guilty, *&c.*

E. of Grantham. Not Guilty, upon my Honour.
E. of Albemarle. Not Guilty, upon my Honour.
E. of Tankerville. Not Guilty, upon my Honour.
E. of Warrington. Not Guilty, upon my Honour.
E. of Scarborough. Not Guilty, upon my Honour.
E. of Mountague. Not Guilty, upon my Honour.
E. of Portland. Not Guilty, upon my Honour.
E. of Rocheſter. Not Guilty, upon my Honour.
E. of Nottingham. Not Guilty, upon my Honour.

E. of Yar-

E. of Yarmouth. Not Guilty, upon my Honour.
E. of Radnor. Not Guilty, upon my Honour.
E. of Macclesfield. Not Guilty, upon my Honour.
E. of Feversham. Not Guilty, upon my Honour.
E. of Burlington. Not Guilty, upon my Honour.
E. of Carlile. Not Guilty, upon my Honour.
E. of Bath. Not Guilty, upon my Honour.
E. of Angleſey. Not Guilty, upon my Honour.
E. of Eſſex. Not Guilty, upon my Honour.
E. of Scarſdale. Not Guilty, upon my Honour.
E. of Thanet. Not Guilty, upon my Honour.
E. of Cheſterfield. Not Guilty, upon my Honour.
E. of Carnarvan. Not Guilty, upon my Honour.
E. of Kingſton. Not Guilty, upon my Honour.
E. of Winchelſea. Not Guilty, upon my Honour.
E. of Stamford. Not Guilty, upon my Honour.
E. of Peterborough. Not Guilty, upon my Honour.
E. of Rivers. Not Guilty, upon my Honour.
E. of Mancheſter. Not Guilty, upon my Honour.
E. of Denbigh. Not Guilty, upon my Honour.
E. of Leiceſter. Not Guilty, upon my Honour.
E. of Bridgwater. Not Guilty, upon my Honour.
E. of Dorſet. Not Guilty, upon my Honour.
E. of Suffolk. Not Guilty, upon my Honour.
E. of Huntington. Not Guilty, upon my Honour.
E. of Darby. Not Guilty, upon my Honour.
E. of Kent. Not Guilty, upon my Honour.

L. H. Steward. My Lord Great Chamberlain, Is *Charles* Lord *Mohun* Guilty, *&c.*
Lord Chamberlain. Not Guilty, upon my Honour.

L. H. Steward. My Lord Marquis of *Normanby*, Is *Charles* L. *Mohun* Guilty, *&c.*
L. Marquis of Normanby. Not Guilty, upon my Honour.
L. Marquis of Hallifax. Not Guilty, upon my Honour.

L. H. Steward. My Lord Duke of *Newcaſtle*, Is *Charles* Lord *Mohun* Guilty, *&c.*
D. of Newcaſtle. Not Guilty, upon my Honour.
D. of Scomberg. Not Guilty, upon my Honour.
D. of St. Albans. Not Guilty, upon my Honour.
D. of Northumberland. Not Guilty, upon my Honour.
D. of Ormond. Not Guilty, upon my Honour.
D. of Southampton. Not Guilty, upon my Honour.
D. of Richmond. Not Guilty, upon my Honour.
D. of Sommerſet. Not Guilty, upon my Honour.

L. H. Steward. My *Lord Steward*, Is *Charles* Lord *Mohun* Guilty, *&c.*
Lord Steward. Not Guilty, upon my Honour.

L. H. Steward. My Lord Preſident, Is *Charles* Lord *Mohun* Guilty, *&c.*
Lord Preſident. Not Guilty, upon my Honour.

Then the *Lord High Steward* of *England*, ſtanding up uncovered, putting his right Hand upon his Breaſt, ſaid, my Lord *Mohun* is not Guilty, upon my Honour.

Then the Lord High Steward *ſeated himſelf again in the Chair, to take the Number of the Peers who had given their Judgment.*

L. H. St. My Lords, Eighty Seven of your Lordſhips are preſent, and you are all unanimouſly of Opinion, That my Lord *Mohun* is Not Guilty of the Felony and Murther whereof he ſtands Indicted.

Lords. Ay, Ay.

L. H. St. Let the Priſoner be call'd to the Bar.

Clerk

Clerk of the Crown. Serjeant at Arms, [illegible]

Serjeant at Arms. O yes, O yes, O yes, [illegible] his Grace, does ſtraightly charge and comm[illegible] to keep Silence, upon pain of Impriſonment.

Clerk of the Crown. Serjeant at Arms, make [illegible]

Serjeant at Arms. O yes, O yes, O yes, Chief [illegible] *don*, bring forth the Body of your Priſoner, *Charles* [illegible] committed to you, in order to be brought hither, this [illegible] will fall thereon.

Then he was brought forth to the Bar, and the [illegible] dreſt himſelf to him in this [illegible]

L. H. St. My Lord *Mohun*, you have been Indict[illegible] *Richard Coote*, upon which Indictment your Lordſhip [illegible] upon your Arraignment has pleaded Not Guilty; and [illegible] put your ſelf upon your Peers, my Lords here preſent, [illegible] Evidence, and have conſider'd of it, and deliver'd their [illegible] matter; and I am to acquaint your Lordſhip, they are [illegible] nion, That your Lordſhip is not Guilty of the Felony [illegible] ſtand Indicted; and therefore your Lordſhip is diſcharged [illegible] paying your Fees.

Then the Lord *Mohun* made his Reverence to the Lords, [illegible] himſelf thus.

Lord Mohun. My Lords, I do not know which way [illegible] Thankfulneſs and Acknowledgment of your Lordſhips [illegible] to me; but I crave leave to aſſure your Lordſhips, That I [illegible] it the Buſineſs of the future part of my Life, ſo to behave my [illegible] ſation in the World, as to avoid all things that may bring [illegible] Circumſtances, as may expoſe me to the giving your Lord[illegible] this nature for the future; And then making his Reverences [illegible] away from the Bar.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, All manner of [illegible] are commanded to keep Silence, by my *Lord High* [illegible] Grace, upon pain of Impriſonment.

L. H. St. My Lords, The Tryal being at an end, [illegible] to be done here, but the determining the Commiſſion.

Lords. Ay, Ay.

L. H. St. Sir *Samuel Aſtry*, let Proclamation be made [illegible] the Commiſſion of *High Stewardſhip*.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, My *Lord High* [illegible] Grace, does ſtraightly charge and Command all manner [illegible] and that have here attended, to depart hence in the peace [illegible] veraign Lord the King, for his Grace, my *Lord High* [illegible] tends now to diſſolve his Commiſſion.

And then the White Staff being delivered to his [illegible] [illegible] be ſtood up, and holding it in both his Hands [illegible] then leaving the Chair, came down to the Wo[illegible] Lordſhips pleaſure to adjourn to the Houſe of L[illegible]

Lords. Ay, Ay.

L. H. St. This Houſe is adjourned into the Hou[illegible]

And ſo they went back in the ſame order [illegible] and all the Aſſembly [illegible]

P I M [illegible]